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17 WISHTOYO FOUNDATION, and VENTURA COASTKEEPER,
18 a program of the WISHTOYO FOUNDATION

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 WISHTOYO FOUNDATION,
16 VENTURA COASTKEEPER, a
17 program of THE WISHTOYO
18 FOUNDATION,

19 Plaintiff,

20 vs.

21 WIGGINS LIFT CO., INC. a
22 corporation, DOES 1 through 10,
23

24 Defendants.

Case No. 2:17-cv-2204-GW-SK

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

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26 WISHTOYO FOUNDATION, a California non-profit corporation, and
27
28 VENTURA COASTKEEPER, a program of the Wishtoyo Foundation, and

(collectively "WISHTOYO" or "Plaintiff") by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On January 17 and February 7, 2017, Plaintiff provided notice of WIGGINS LIFT CO., INC. ("WIGGINS" or "Defendant")'s violations of the Act, and of its intention to file suit against Defendant, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). True and correct copies of the initial and supplement notice letters are attached as Exhibit A and Exhibit B, respectively, and is incorporated by reference.

1 3. More than sixty days have passed since notice was served on WIGGINS
2 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
3 alleges, that neither the EPA nor the State of California has commenced or is
4 diligently prosecuting a court action to redress the violations alleged in this complaint.
5 This action's claim for civil penalties is not barred by any prior administrative penalty
6 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
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9 4. Venue is proper in the Central District of California pursuant to Section
10 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
11 located within this judicial district.
12

13 **II. INTRODUCTION**

14 5. This complaint seeks relief for discharges of storm water and non-storm
15 water pollutants from WIGGINS' industrial facility located at 2571 Cortez Street in
16 Oxnard, California (hereinafter "Facility") in violation of the Act and National
17 Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State
18 Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended
19 by Water Quality Order No. 92-12-DWQ, Water Quality Order No. 97-03-DWQ and
20 Order No. 2015-0057-DWQ (hereinafter the "Permit" or "General Permit").
21 Defendant's failure to comply with the discharge, treatment technology, monitoring
22 requirements, and other procedural and substantive requirements of the Permit and the
23 Act are ongoing and continuous.
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25 6. With every significant rainfall event millions of gallons of polluted storm
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1 water originating from industrial operations, such as those conducted by Defendant,
2 pour into storm drains and local waterways. The consensus among agencies and water
3 quality specialists is that storm water pollution accounts for more than half of the total
4 pollution entering surface waters each year.
5

6 7. The waterways of Ventura County, including the Santa Clara River and
7
8 Ventura's coastal waters are ecologically sensitive areas and are essential habitat for
9 dozens of fish and bird species as well as macro-invertebrate and invertebrate species.
10 The waterways provide aesthetic opportunities, such as wildlife observation, and the
11 public uses these waterways for activities such as water contact sports and non-contact
12 recreation.
13

14 8. Industrial facilities, like Defendant's, that are discharging storm water
15 and non-storm water contaminated with sediment, heavy metals, and other pollutants
16 contribute to the impairment of downstream waters and aquatic dependent wildlife
17 and harm the special aesthetic and recreational significance of these waterways, which
18 adversely affect the people in the surrounding communities. These contaminated
19 discharges can and must be controlled for the ecosystem to regain its health.
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23 **III. PARTIES**

24 9. Founded in 1997, the Wishtoyo Foundation is a 501(c)(3) non-profit
25 public benefit grassroots corporation organized under the laws of the State of
26 California and is located at 11182 Azahar Street, Ventura, CA 93004 and 33904
27 Pacific Coast Highway, Malibu, California 90265.
28

1 10. With over 700 members consisting of Ventura County residents,
2 Chumash Native Americans, and general public who enjoy the Santa Clara River and
3 Ventura County coastal marine waters and environment, the foundation's mission to
4 protect and preserve Chumash culture, the culture of First Nations, and the natural
5 resources all people depend upon.
6

7 11. Ventura Coastkeeper ("Coastkeeper"), a program of Wishtoyo
8 Foundation, is dedicated to the preservation, protection and defense of the ecological
9 integrity and water quality of Ventura County's inland waterbodies, coastal waters,
10 and watersheds. The organization works to achieve this goal through litigation and
11 regulatory programs that ensure water quality protection for all waterways in the
12 county. Coastkeeper is a member of the Waterkeeper Alliance, that has nearly 200
13 member programs on six continents around the world fighting for clean water.
14

15 12. The unlawful discharge of polluted storm water from WIGGINS
16 negatively affects the water quality of the El Rio Drain, Santa Clara River ("SCR"),
17 the SCR Estuary, and ultimately Ventura's coast and the Pacific Ocean (collectively
18 "Receiving Waters"). Wishtoyo's members live near and/or use the Receiving Waters
19 for domestic and drinking purposes, as well as to fish, boat, swim, surf, bird watch,
20 view wildlife, and to engage in scientific study and cultural activities. The Facility's
21 polluted discharges impair these uses. Thus, the interests Plaintiff's members have
22 been, are being, and will continue to be adversely affected by the Facility's failure to
23 comply with the Clean Water Act and General Industrial Permit. The relief sought
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1 herein will redress the harms to WISHTOYO caused by Defendant(s)' activities.

2 13. Continuing commission of the acts and omissions alleged above will
3 irreparably harm Plaintiff and its members, for which harm they have no plain, speedy
4 or adequate remedy at law.
5

6 14. Plaintiff alleges on information and belief that Defendant WIGGINS is a
7 California corporation that operates the Facility in Oxnard, California.
8

9 15. Upon information and belief, and upon that basis, Plaintiff alleges that
10 the true names, or capacities of DOES 1 through 10, inclusive (the "DOES"), whether
11 individual, corporate, associate or otherwise, are presently unknown to Plaintiff, who
12 therefore sue said Defendants by such fictitious names. Plaintiff will amend this
13 Complaint to show their true names and capacities when the same have been
14 ascertained. Whether or not WIGGINS is associated with any other individual,
15 corporate, associate or otherwise was not immediately apparent through an initial
16 investigation completed by Plaintiff.
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20 16. WIGGINS and DOES 1 through 10 are referred to collectively
21 throughout this Complaint as Defendant or Defendants.
22

23 **IV. STATUTORY BACKGROUND**

24 **A. The Clean Water Act.**

25 17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
26 any pollutant into waters of the United States unless the discharge complies with
27 various enumerated sections of the statute. Among other things, section 301(a)
28

1 prohibits discharges not authorized by, or in violation of, the terms of NPDES permits
2 issued pursuant to section 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342(b). The Act
3 requires all point source discharges of pollutants to waters of the United States be
4 regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).
5

6 18. “Waters of the United States” are defined as “navigable waters,” and “all
7 waters which are currently used, were used in the past, or may be susceptible to use in
8 interstate or foreign commerce, including waters which are subject to the ebb and flow
9 of the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
10

11 19. The EPA promulgated regulations defining “waters of the United States.”
12 *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not
13 only traditionally navigable waters, but also other waters, including waters tributary to
14 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
15 could affect interstate commerce.
16

17 20. The Act confers jurisdiction over waters that are tributaries to
18 traditionally navigable waters where the water at issue has a significant nexus to the
19 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*
20 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).
21

22 21. A significant nexus is established if the water in question “either alone or
23 in combination with similarly situated lands in the region, significantly affect the
24 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547
25 U.S. at 780; *N. Cal. River Watch*, 496 F.3d at 999-1000.
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1 22. Section 505(a)(1) of the Act provides for citizen enforcement actions
2 against any “person” who is alleged to be in violation of an “effluent standard or
3 limitation...or an order issued by the Administrator or a State with respect to such a
4 standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).

6 23. An action for injunctive relief is authorized under section 505(a) of the
7 Act. *See* 33 U.S.C. § 1365(a)(1).

9 24. Each separate violation of the Act subjects the violator to a penalty of up
10 to \$51,570 per day for violations occurring after November 2, 2015; and up to
11 \$37,500 per day per violation for violations occurring prior to and including
12 November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4
13 (Adjustment of Civil Monetary Penalties for Inflation).

15 25. Section 505(d) of the Act allows prevailing or substantially prevailing
16 parties to recover litigation costs, including attorneys’ fees, experts’ fees, and
17 consultants’ fees. *See* 33 U.S.C. § 1365(d).

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20 **B. California’s Storm Water Permit.**

21 26. The State Board is charged with regulating pollutants to protect
22 California’s water resources. *See* Cal. Water Code § 13001.

23 27. Section 402(p) of the Act establishes a framework for regulating
24 industrial storm water discharge under the NPDES permit program. 33 U.S.C. §
25 1342(p).
26
27

28 28. Section 402(b) of the Act allows each state to administer an EPA-
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1 approved NPDES permit program for regulating the discharge of pollutants, including
2 discharges of polluted storm water. *See* 33 U.S.C. § 1342(b).

3 29. States with approved NPDES permit programs are authorized by Section
4 402(b) to regulate industrial storm water discharges through individual NPDES
5 permits issued to discharge and/or through the issuance of a statewide general NPDES
6 permit applicable to all industrial storm water discharges. *See* 33 U.S.C. § 1342(b).
7

8 30. California is a state authorized by EPA to issue NPDES permits. The
9 Permit is a statewide general NPDES permit issued by the State Board pursuant to the
10 Act.
11

12 31. Between 1997 and June 30, 2015, the Permit in effect in California was
13 Order No. 97-03-DWQ, which WISHTOYO refers to herein as the "1997 Permit."
14

15 32. On July 1, 2015, California re-issued the Permit pursuant to Order No.
16 2014-0057-DWQ's NPDES, which is referred to herein as the "2015 Permit."
17

18 33. The 2015 Permit superseded the 1997 Permit, except for enforcement
19 purposes, and its terms are as stringent, or more so, than the terms of the 1997 Permit.
20
21 *See* 2015 Permit, Findings, ¶ 6.
22

23 34. In order to discharge storm water lawfully in California, industrial
24 dischargers must secure coverage under the Permit and comply with its terms, or
25 obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2; 2015
26 Permit, Findings, ¶ 12. Prior to beginning industrial operations, dischargers are
27 required to apply for coverage under the Permit by submitting a NOI to the State
28

1 Board. 1997 Permit, Finding #3; 2015 Permit, Findings, ¶ 17.

2 35. Compliance with the Permit constitutes compliance with the Act for
3 purposes of storm water discharges. 33. U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).
4 Conversely, violations of the Permit are violations of the Act. 1997 Permit, Section
5 C(1); 2015 Permit, Section XXI(A).
6

7
8 **C. The Permit's Discharge Prohibitions, Effluent Limitations, and**
9 **Receiving Water Limitations.**

10 36. The Permit contains a Discharge Prohibition on the direct or indirect
11 discharge of materials other than storm water ("non-storm water discharges") that is
12 not otherwise authorized by an NPDES permit to waters of the United States. 1997
13 Permit, Section A(1); 2015 Permit, Section III(B).
14

15 37. The Permit contains an Effluent Limitation that requires permittee
16 facilities to reduce or prevent pollutants in storm water discharges through the
17 implementation of Best Available Technology Economically Achievable ("BAT") for
18 toxic or non-conventional pollutants, and Best Conventional Pollutant Control
19 Technology ("BCT") for conventional pollutants. 40 C.F.R. §§ 401.15-16; 1997
20 Permit, Section B(3); 2015 Permit, Section V(A). BAT and BCT include both
21 structural (e.g. installation of advanced filtration and treatment systems, curbs to
22 direct storm water flows, infiltration galleries) and non-structural (e.g. sweeping, and
23 employee education and training) measures.
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28 38. In order to comply with the statutory BAT/BCT mandate, covered

1 facilities must implement site-specific structural and non-structural Best Management
2 Practices (“BMPs”) designed to prevent or reduce discharges with pollutant
3 concentrations that violate the Permit, and therefore the Act.
4

5 39. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial
6 Activities (“MSGP”) include numeric benchmarks for pollutant concentrations in
7 storm water discharges (“EPA Benchmarks”) that are numeric thresholds to aid in
8 determining whether a facility discharging industrial storm water had implemented the
9 requisite BAT and/or BCT as mandated by the Act. *See* United States Environmental
10 Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges
11 Associated with Industrial Activity, as modified effective May 9, 2009.
12

13
14 40. EPA’s Benchmarks serve as objective measures for evaluating whether
15 the BMPs designed and implemented at a facility achieve the statutory BAT/BCT
16 standards. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); *see also* MSGP,
17 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); *see also* MSGP, 65 Fed. Reg. 64,746,
18 64,766-67 (Oct. 30, 2000).
19
20

21 41. The State Board established Numeric Action Levels (“NALs”) in the
22 2015 Permit. *See* 2015 Permit, Section V(A). NALs are derived from, and function
23 similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet, Section I(D)(5).
24 Benchmarks and NALs represent pollutant concentrations at which a storm water
25 discharge could impair, or contribute to impairing, water quality and/or affect human
26 health.
27
28

1 42. The Permit also contains various Receiving Water Limitations. 1997
2 Permit, Receiving Water Limitation C(1)-(2); 2015 Permit, Section VI(A). Receiving
3 Waters are those surface or other waters to which pollutants are discharged from a
4 given facility.
5

6 43. The first Receiving Water Limitation is that stormwater discharges shall
7 not cause or contribute to an exceedance of any applicable water quality standard
8 (“WQS”). *Id.*
9

10 44. WQS are pollutant concentration levels determined by the State Board,
11 the various regional boards, and the EPA to be protective of the beneficial uses of the
12 water that receive polluted discharges. WQS applicable to the discharges covered by
13 the Permit include, but are not limited to, those set out in the *Water Quality Control*
14 *Plan, Los Angeles Basin (Basin Plan for the Coastal Watersheds for Los Angeles and*
15 *Ventura Counties)*, California Regional Water Quality Control Board, Los Angeles
16 Region 4 (adopted June 13, 1994, as amended) (“Basin Plan”) and in the Criteria for
17 Priority Toxic Pollutants for the State of California (“CTR”), 40 C.F.R. § 131.38.
18
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22 45. The second Receiving Water Limitation is that storm water discharges
23 shall not adversely impact human health or the environment. 1997 Permit, Receiving
24 Water Limitation C(1); 2015 Permit, Section VI(B).
25

26 46. The third Receiving Water Limitation is that concentrations of pollutants
27 in storm water discharges shall not threaten to cause pollution or a public nuisance.
28 *See* 2015 Permit, Section VI(C).

1 47. The Facility violates the Permit's Receiving Water Limitation when its
2 storm water discharges contain pollutant levels that: i) exceed an applicable WQS; ii)
3 exceed levels known to adversely impact aquatic species and the environment; or iii)
4 threaten to cause pollution.
5

6 48. The Basin Plan identifies the "Beneficial Uses" of the portions of the
7 Receiving Waters that receive polluted storm water discharges from the Facility.
8 These Beneficial Uses include: agriculture supply (AGR), municipal and domestic
9 supply (MUN), groundwater recharge (GWR), water contact recreation (REC1), non-
10 contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater
11 habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened,
12 or endangered species (RARE), migration of aquatic organisms (MIGR) and
13 spawning, reproduction and development (SPWN). See Basin Plan, pp. 2-1 - 2-5. The
14 Basin Plan designates the Santa Clara River ("SCR") surface waters adjacent to and
15 downstream from the Facility as potential municipal and domestic supply (MUN)
16 beneficial uses, and existing agriculture supply (AGR) and groundwater recharge
17 (GWR) beneficial uses. *Id.* Waters designated and used for municipal, domestic, and
18 agricultural supply can be consumed by children, pregnant women, the elderly, and
19 farm workers. See Basin Plan, Table 2-1.
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26 49. Discharges of pollutants at levels above WQS contribute to the
27 impairment of the beneficial uses of the waters receiving the discharges and
28 constitute violations of the Permit and Act.

1 50. The Basin Plan also narrative standard, including that inland
2 surface waters "shall not contain suspended or settleable materials in concentrations
3 that cause nuisance or adversely affect beneficial uses." Basin Plan, 3-37.
4

5 51. The Basin Plan also includes a toxicity standard requiring inland
6 surface waters "be maintained free of toxic substances in concentrations that are toxic
7 to, or that produce detrimental physiological responses in human, plant, animal or
8 aquatic life." Basin Plan, 3-38.
9

10 52. The CTR includes numeric criteria set to protect human health
11 and the environment in the State of California.¹
12

13 53. Discharges with pollutant levels in excess of the CTR criteria, the
14 Basin Plan standards, and/or other applicable WQS are violations of the Permit's
15 Receiving Water Limitations.
16

17 54. WQS applicable to the Facility include, but may not be limited to, those
18 detailed in TABLE 1 below.
19

20 55. According to the 2010 303(d) List of Impaired Water Bodies, both the
21 Estuary and Reach One of the SCR are listed as impaired for toxicity. Polluted storm
22 water discharges from the Defendant's Facility may cause and/or contribute to the
23 further impairment of the water quality of the SCR, the Estuary, and the aquatic life
24 that depend on these sensitive ecosystems. To regain the health of the SCR watershed
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27
28 ¹ U.S. Env'tl. Prot. Agency, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic
Pollutants for the State of California Fact Sheet, EPA 823-00-008 (Apr. 2000) *available at*
<http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=p1007BKN.txt>
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1 and protect the health of threatened/endangered species, the illegal discharge of
2 contaminated storm water, like those from WIGGINS' Facility, must be eliminated.

3 **D. The Permit's Planning and BMP Design Requirements.**
4

5 56. Dischargers must develop and implement a Storm Water Pollution
6 Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit,
7 Sections A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54) and X(B).
8

9 57. The SWPPP must identify and evaluate sources of pollution associated
10 with industrial activities that may affect the quality of stormwater and authorized non-
11 stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit,
12 Section X(G).
13

14 58. The SWPPP must identify and describe site-specific BMPs to reduce or
15 prevent pollutants associated with industrial activity in storm water and authorized
16 non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H).
17 The SWPPP must also include BMPs that achieve pollutant discharge reductions
18 attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015 Permit, Section
19 I(D) (Finding 32), Section X(C).
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22 59. The SWPPP must include: i) a narrative description and summary of all
23 industrial activity, potential sources of pollution, and potential pollutants; ii) a site
24 map indicating the storm water conveyance system, associated points of discharge,
25 direction of flow, areas of actual and potential pollutant contact, including the extent
26 of pollution-generating activities, nearby water bodies, and pollutant control
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1 measures; iii) a description of storm water management practices; iv) a description of
2 the BMPs to be implemented to reduce or prevent pollutants in storm water discharges
3 and authorized non-storm water discharges; v) the identification and elimination of
4 non-storm water discharges; vi) identify and locate where materials are being shipped,
5 received, stored, handled, as well as typical quantities of such materials and the
6 frequency with which they are handled; vii) a description of dust and particulate
7 generating activities; and viii) a description of individuals and their current
8 responsibility for developing and implementing the SWPPP. 1997 Permit, Section
9 A(1)-(10); 2015 Permit, Section X.
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13 60. The 2015 Permit further requires certain SWPPP enhancements,
14 including a more comprehensive assessment of potential pollutant sources and more
15 specific BMP descriptions. *See* 2015 Permit Sections X(G)(2), (4), (5).
16

17 61. The objectives of the SWPPP are to identify and evaluate the source of
18 pollutants associated with industrial activities that may affect the quality of storm
19 water discharges, to identify, design and implement site-specific BMPs to prevent the
20 exposure of pollutants to storm water, and to reduce or prevent the discharge of
21 polluted storm water from industrial facilities. 1997 Permit, Section A(2); 2015
22 Permit, Section X.
23
24

25 62. The objectives of the requirement to develop, maintain and revise a
26 SWPPP are to identify pollutant sources and develop BMPs that reduce or prevent
27 polluted storm water from negatively affecting Receiving Waters and California
28

1 communities. *See* 1997 Permit Section A(2); *see also* 2015 Permit Section X(C).

2 BMPs must achieve compliance with the Permit's Effluent Limitations and Receiving
3 Water Limitations. To ensure compliance, the SWPPP must be evaluated and revised
4 as necessary. *See* 1997 Permit Sections A(9)-(10); *see also* 2015 Permit § X(B).

5 Failure to develop or implement an adequate SWPPP (or revise an existing SWPPP,
6 as necessary) constitutes an independent Permit violation. *See* 2015 Permit, Fact
7 Sheet, Section I(1).

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10 63. The Permit also requires that the discharger conduct an annual
11 comprehensive site compliance evaluation that includes a review of all visual
12 observation records, inspection reports and sampling analysis data, a visual inspection
13 of all potential pollutant sources for evidence of, or the potential for, pollutants
14 entering the drainage system, a review and evaluation of all BMPs to determine
15 whether the BMPs are adequate, properly implemented and/or maintained, or whether
16 additional BMPs are needed, and a visual inspection of equipment needed to
17 implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Section XV.

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21 64. Section A(9)(d) of the 1997 Permit requires that the discharger submit an
22 evaluation report that includes an identification or personnel performing the
23 evaluation, date(s) of the evaluation(s) necessary SWPPP revisions, a schedule for
24 implementing SWPPP revisions, any incidents of non-compliance and the corrective
25 actions taken, and a certification that the discharger is in compliance with the Permit.
26
27
28 1997 Permit; Section A(9)(d)(i)-(vi). If certification cannot be provided, the

1 discharger must explain in the evaluation report why the facility is not in compliance.
2 *Id.*, Section A(9)(d). The evaluation report shall be submitted as part of the Annual
3 Report specified in Section B(14) of the Permit. *Id.*
4

5 **E. The Permit's Monitoring and Reporting Requirements**

6 65. The 1997 Permit required facility operators to develop and implement a
7 monitoring and reporting program ("M&RP") when industrial activities begin at the
8 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit also requires
9 implementation of an M&RP. 2015 Permit, Sections X(I) and XI.
10
11

12 66. The objectives of the M&RP are to inform discharges about the
13 effectiveness of BMPs designed in the planning phase and implemented on the
14 ground. Where the M&RP indicates that BMPs are not adequate to prevent or reduce
15 pollutants in storm water discharges, permittees have an obligation to re-design
16 BMPs and/or improve BMP implementation as necessary to ensure that storm water
17 discharges are in compliance with the Permit's Discharge Prohibitions, Effluent
18 Limitations and Receiving Water Limitations. *See* 1997 Permit, Section B(2); *see*
19 *also* 2015 Permit, Sections X(I) and XI.
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23 67. The 2015 Permit requires facility operators to visually observe, monitor
24 and sample storm water discharges to ensure that the facility is complying with its
25 obligations under the Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.
26

27 68. The M&RP must be revised as necessary to ensure Permit compliance.
28 1997 Permit, Section B(2)(d); 2015 Permit, Section XI(A)(4).

1 69. Dischargers must conduct monthly visual observations of storm water
2 discharges as part of a legally adequate M&RP. 1997 Permit, Section B(4)(a); 2015
3 Permit, Section XI(A).

4
5 70. Dischargers must observe and document the presence of any floating and
6 suspended materials, oil and grease, discolorations, turbidity, or odor in a discharge,
7 and the source of any pollutants in storm water discharges from the facility.
8

9 71. Dischargers are required to maintain detailed records of each
10 observation, and corrective action taken to reduce or prevent pollutant from
11 contacting storm water discharges. *See* 1997 Permit, Section B(4)(c); *see also* 2015
12 Permit, Section XI(A)(3).
13

14 72. The Permit requires dischargers to revise the SWPPP as necessary to
15 ensure that BMPs are effectively reducing and/or eliminating pollutants from
16 entering surface waters from the facility. 1997 Permit, Section B(4)(c), 2015 Permit,
17 Section XI(B)(1).
18

19
20 73. The Permit requires dischargers to visually observe and collect samples
21 of storm water discharges from each location where storm water is discharged. 1997
22 Permit, Sections B(5) and B(7); 2015 Permit, Section XI(B)(4).
23

24 74. Section B(5)(a) of the 1997 Permit required dischargers to collect storm
25 water samples during the first hour of discharge from the first storm event of the Wet
26 Season and at least one other storm event in the Wet Season. All storm water
27 discharge locations must be sampled. Facility operators that do not collect samples
28

1 from the first storm event of the Wet Season are still required to collect samples from
2 two other storm events of the Wet Season and must explain in the Annual Report
3 why the first storm event was not sampled.
4

5 75. Section B(5)(b) required that sampling conducted pursuant to the 1997
6 Permit occur during scheduled facility operating hours that are preceded by at least
7 three (3) working days without storm water discharge.
8

9 76. Section XI(B)(1) of the 2015 Permit requires sampling from a Qualifying
10 Storm Event ("QSE"), which is a precipitation event that produces a discharge for at
11 least one drainage area and is preceded by forty-eight (48) hours with no discharge
12 from any drainage area.
13

14 77. Dischargers are required to collect samples of storm water within 4 hours
15 of the start of facility operations if the QSE began within the previous 12-hour
16 period, e.g. for storms with discharges that begin during the night for facilities with
17 day-time operations. 2015 Permit, Section XI(B)(5)(b).
18

19 78. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
20 analyze storm water samples from two (2) QSEs within the first half of each
21 reporting year (July 1 to December 31), and two (2) QSEs within the second half of
22 each reporting year (January 1 to June 30).
23

24 79. Section XI(B)(11) of the 2015 Permit, among other requirements,
25 provides that permittees must submit all sampling and analytical results for all
26 samples via SMARTS within thirty (30) days of obtaining all results for each
27
28

1 sampling event.

2 80. The Permit requires all dischargers, regardless of the type of industrial
3 operation, to analyze each sample for pH, specific conductance ("SC"), TSS, and
4 either total organic carbon ("TOC") or Oil & Grease ("O&G"). 1997 Permit, Section
5 B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b). Depending upon the type of
6 industrial operation, the Permit may require a discharger to analyze each sample for
7 additional constituents, such as copper, lead, aluminum, iron, and or zinc for
8 example.
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12 **V. STATEMENT OF FACTS**

13 **A. The Facility**

14
15 81. Upon information and belief, WIGGINS first enrolled on September 11,
16 2002 for coverage under the 1997 Permit ("NOI 1997"); and then on June 26, 2015
17 obtained coverage under the 2015 Permit ("NOI 2015"). The Waste Discharge
18 Identification ("WDID") number for the WIGGINS Facility is 4 56I017490.² The
19 Primary SIC code is 3537 (Industrial Trucks, Tractors, Trailers, and Stackers).
20

21 82. The Facility is approximately 3.7 acres and consists of a single large
22 assembly/office building, an attached storage building, several outdoor areas (some
23 covered overhead) used for parking, loading/unloading, material storage, as well as
24 certain industrial operations. Materials stored outside including metal plate stock and
25 various gas and oil supplies.
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² Previously filed under WDID # 4 56S017490.
COMPLAINT

1 83. According to the Facility's 2015 SWPPP, WIGGINS fabricates fork lift
2 trucks, which includes metal cutting, fabrication, assembly, painting, and inspection
3 services. Equipment at the Facility includes small forklifts, overhead crane, flame
4 cutting tools, welders with various gas mixtures, air powered hand held grinders, and
5 paint spray equipment. Activities at the site that are significant to storm water
6 management include the use and storage of hazardous substances and chemicals such
7 as the following: gases (e.g. propane, acetylene, carbon dioxide); drums and tanks
8 containing liquid oils (e.g. hydraulic, motor, gear and waste oil); and other liquid
9 materials (e.g. diesel, waste coolant, ethylene glycol, gasoline, coolant, and
10 degreaser). The abovementioned activities act as a potential source of pollution of
11 contaminated water, oil, grease, hydrocarbons, and metal ions. Other sources of
12 pollution at the Facility include paint particulates from paint activities and rubber
13 solids from tires used and/or stored on site.
14

15 84. Also indicated in the 2015 SWPPP, storm water discharges from the
16 Facility at one point at the northeast corner of the property into a local storm drain
17 system (El Rio Drain) which discharges directly into Reach 1 of the SCR
18 approximately 7,000 feet from the Facility. From there, water flows into the SCR
19 Estuary, SCR Estuary Beach-Surfers Knoll, McGrath Beach, and disperses across the
20 Ventura coastline. Storm water from the Wiggins Facility drains to SCR Reach 1,
21 which is approximately 7,000 feet southeast of the Facility. *See* 2015 SWPPP, p. 9.
22 First, surface water flows to the northeast corner of the Facility and drains into the
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1 storm drain system known. *Id.*; see also SWPPP Wiggins Site Plan Attachment. Next,
2 as indicated by maps maintained by the County of Ventura³ and the State Board,⁴
3 water is transported southwest to the SCR Reach 1 via the El Rio Drain owned by the
4 City of Oxnard and monitored by the Ventura Countywide Storm water Quality
5 Management Program.⁵ From the SCR Reach 1 (Hwy 101 to SCR Estuary), water
6 flows into the SCR Estuary, SCR Estuary Beach-Surfers Knoll, McGrath Beach, and
7 disperses across the Ventura coastline.
8

10 85. On information and belief, Plaintiff alleges that the management
11 practices at the Facility do not prevent the sources of contamination described above
12 from causing the discharge of pollutants to waters of the United States. Of particular
13 concern to WISHTOYO are i) exceedances and violations of effluent and receiving
14 water limitations, ii) inadequate monitoring and reporting program, iii) failure to file
15 accurate and timely sample reports, and iv) failure to implement an adequate SWPPP.
16

18 86. On information and belief, Plaintiff alleges that the Facility has failed
19 and continues to fail to reduce or prevent pollutants associated with industrial activity
20 in storm water discharges through implementation of BMPs that achieve BAT/BCT
21 as required by the Act and Permit.
22

24
25 ³ See Ventura Countywide Unified Storm Drain Map data, available at
26 <http://vcstormwater.org/index.php/publications/maps/ventura-countywide-unified-storm-drain-map> (last visited Jan. 5,
2016).

27 ⁴ See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired
28 Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at
http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).

⁵ Water flows southerly along Cortez Street past the Ventura freeway (101 fwy.), then west across Vineyard Avenue
(State Route 232), northwest along Oxnard Boulevard (Pacific Coast Highway 1), west adjacent to nearby railroad
tracks, south down Ventura Road, and jettisons west into the SCR

B. The Receiving Waters

87. Flowing approximately 116 miles from the headwaters of the San Gabriel Mountains to the Pacific Ocean through a 1,600 square mile watershed, the Santa Clara River is southern California's last naturally flowing major river system. In addition to being the largest wild river remaining in southern California, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat for endangered and rare species. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species including the endangered Southern California Steelhead, Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, Pacific Lamprey, California Red-Legged Frog, Arroyo Toad, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Least Bell's Vireo. The Santa Clara River is also a significant input to southern California's coastal waters at the Cities of San Buenaventura and Oxnard, and a healthy, unpolluted Santa Clara River from Santa Clarita through Piru, Fillmore, Santa Paula, Saticoy, El Rio, Ventura, and Oxnard provides unmatched recreational, cultural, aesthetic, and spiritual opportunities and resources in the region. In addition, the ecosystem services provided by the Santa Clara River, as recognized by the Basin Plan include agriculture supply, groundwater recharge, freshwater replenishment, recreation, cold and warm freshwater habitat, wildlife habitat for rare, threatened, or endangered species, wetland habitat, estuarine habitat, and migration, spawning,

1 reproduction and development habitat for aquatic organisms. Thus, it is imperative
2 that Santa Clara River's water quality, aesthetic values, and aquatic ecosystem
3 functions are adequately protected. In 2005, the Santa Clara River was named the
4 "10th Most Endangered River" in the Country by the American Rivers organization
5 due to anthropogenic impacts, such as pollution
6

7
8 88. Discharges of polluted storm water and non-storm water to the Receiving
9 Waters pose carcinogenic, developmental and reproductive toxicity threats to the
10 public, and adversely affect the aquatic environment, and contribute the degradation
11 of these already impaired waters, beaches, and recreational and wildlife resources,
12 including the Santa Clara River's native and endangered species. For example, both
13 the Estuary and Reach 1 of the SCR are listed as impaired for toxicity.⁶ Polluted storm
14 water discharged from the Wiggins Facility may cause and/or contribute to the
15 impairment of water quality in the SCR, its watershed and the Estuary, and is acutely
16 toxic to, and has sub-lethal toxicity impacts on, the Southern California Steelhead and
17 other aquatic life in the SCR and its estuary.
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19
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21 **C. Defendant's Specific Violations of Water Quality Standards**
22 **Including Effluent Limitations, Receiving Water Limitations and**
23 **Protections for Impaired Water Bodies**

24 89. **Effluent Limitations.** Since at least February 06, 2014, WIGGINS has
25 taken samples or arranged for samples to be taken of storm water discharges at the
26

27
28 ⁶ See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).
COMPLAINT

1 Facility. The sample results were reported in the Facility's annual reports submitted to
2 the Regional Board. WIGGINS certified each of those annual reports pursuant to
3 Sections A and C of the General Permit.
4

5 90. According to information available to WISHTOYO, including a thorough
6 review of both electronic and hard copy files held by the State Board, the Facility has
7 been in continuous violation of the Permit's Effluent Limitations for the entirety of
8 the relevant statute of limitations, at least with respect to total suspended solids (TSS),
9 aluminum (Al), copper (Cu), iron (Fe) and zinc (Zn); as well as violations of other
10 parameters such as lead (Pb), magnesium (Mg), and for potential of hydrogen (pH)
11 levels. This pattern of exceedances of EPA benchmark and applicable NAL values
12 confirms the Defendant's consistent failure to implement adequate BMPs and its
13 ongoing violation of the Permit and the Act.
14
15

16 91. The data available to WISHTOYO, as reported to the Regional Board by
17 WIGGINS, relevant to the Facility's violations of the Permit's Effluent Limitation are
18 summarized below at Table 1. Self-monitoring reports under the Permit are deemed
19 "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union*
20 *Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).
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TABLE 1

**SAMPLING DATA DEMONSTRATES ONGOING EXCEEDANCES OF EFFLUENT
LIMITATIONS FOR MULTIPLE POLLUTANTS**

LINE	DATE	TSS	AL	FE	ZN	CU	PB	MG
EPA BENCHMARK		100	0.75	1.0	0.117	0.0322	0.262	0.064
APPLICABLE NAL		100 annual / 400 instant	0.75	1.0	0.26	0.0322	0.262	0.064
UNITS		MG/L	MG/L	MG/L	MG/L	MG/L	MG/L	MG/L
1	02/06/14	83	2.40*	2.90*	1.0*	0.043*	0.045	0.15*
2	12/02/14	110*	NT	NT	NT	NT	NT	NT
3	09/15/15 ^A	340*	6.10*	14.00*	2.50*	NT	0.240	NT
4	01/05/16	170*	4.70*	9.90*	0.99*	NT	0.160	NT
5	03/07/16 ^B	360*	7.10*	17.0*	2.20*	NT	0.170	NT
6	03/11/16	950*	13.0*	17.0*	4.30*	NT	0.460*	NT
7	10/28/16 ^C	240*	3.7*	4.9*	2.0*	NT	0.11	NT
8	01/04/17	155*	3.3*	3.6*	1.0*	NT	0.12	NT
* Indicating exceedance of applicable effluent limitations.								
NT Not tested by WIGGINS.								
A Sample untimely reported on December 13, 2016.								
B Invalid Qualified Storm Event since Facility likely experienced discharge within proceeding 48 hours on Mar. 5 (0.23 in.) and Mar. 6 (0.86 in.). See Storm Event Summary attached to Jan. 17 and Feb. 7 notice letters (Exhibits A and B).								
C Sample untimely reported and included pH level of 5, outside EPA Benchmark and applicable NAL range of 6.0 - 9.0.								

92. The results of storm water sample analyses between February 2014 and January 2017 (as summarized in lines one (1) through eight (8) of Table 1) show consistent exceedances of benchmark/NAL levels for TSS, Al, Cu, Fe, and Zn. In some cases, data indicates exceedances of 9x above parameters for total suspended

1 solids, 17x for aluminum, 17x for iron, and 36x for zinc. See Table 1, line 6.

2 Information available to WISHTOYO, including the sampling data summarized
3 above, demonstrates that the Facility has and continues to fail to develop or
4 implement BMPs that achieve compliance with the Act's BAT/BCT mandates.
5

6 **93. Primary Receiving Water Limitations.** Receiving Water Limitation
7
8 C(2) prohibits storm water discharges and authorized non-storm water discharges that
9 cause or contribute to an exceedance of an applicable WQS.⁷ The 1997 and 2015
10 Storm Water Permit includes the same receiving water limitation. See 2015 Permit,
11 Receiving Water Limitation VI.A. Samples of storm water discharged from the
12 WIGGINS Facility have demonstrated exceedances of the Basin Plan's water quality
13 standards for numerous pollutants (see Table 1). These discharges that contain
14 pollutants in excess of an applicable water quality standard violate Receiving Water
15 Limitation C(2) of the Storm Water Permit and the Clean Water Act, including the
16 EPA's CTR at 40 C.F.R. § 131.38. *Santa Monica Baykeeper v. Kramer Metals, Inc.*
17 619 F.Supp.2d 914 (C.D. Cal 2009). For instance, the Basin Plan set the limit for
18 Aluminum at 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the
19 Facility discharges to. Thus, any and all exceedance of a 1 mg/L discharge for
20 Aluminum is a separate and distinct violation of the Permit's Receiving Water
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27 ⁷ The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant
28 concentration levels determined by the state or federal agencies to be protective of designated Beneficial
Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial
Uses. Applicable water quality standards include, among others, the CTR, and water quality objectives in the
Basin Plan.

1 Limitations.

2 94. **Secondary Receiving Water Limitations.** Receiving Water Limitation
3 C(1) of the 1997 General Storm Water Permit prohibits storm water discharges and
4 authorized non- storm water discharges to surface water that adversely impact human
5 health or the environment. Storm Water Permit, Receiving Water Limitation C(1).
6 The 2015 Permit includes the same receiving water limitation. See 2015 Permit,
7 Receiving Water Limitation VI. B. Discharges that contain pollutants in
8 concentrations that exceed levels known to adversely impact aquatic species and the
9 environment constitute violations of Receiving Water Limitation C(1) of the 2015
10 Storm Water Permit, and the Clean Water Act. Discharges of toxic metals such as
11 iron, aluminum, copper, lead, and zinc from the Facility into Receiving Waters cause
12 or contribute to: acute and chronic toxicity and sublethal toxicity impacts to aquatic
13 life and aquatic plants; change in the diversity and abundance of aquatic life; change
14 in aquatic community structure and function; impacts to metabolism and
15 osmoregulation of aquatic life; change in the structure and quality on benthic
16 invertebrate habitat and food resources leading to decline in benthic invertebrate
17 populations and diversity; and increases in aquatic organisms dietary supply of metals
18 that can result in toxicity effects that ripple through an ecosystem's food chain. Both
19 the Estuary and Reach 1 of the SCR to which Wiggins discharges are listed as
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1 impaired for toxicity.⁸ Polluted storm water discharged from the Wiggins Facility
2 causes and/or contributes to the impairment of water quality in the SCR, SCR Estuary,
3 and the SCR watershed which is acutely toxic to, and have sub-lethal impacts on, the
4 Southern California Steelhead and other aquatic life in the SCR and the SCR Estuary.
5 Therefore, the stormwater discharges from the Facility adversely impact human health
6 and the environment in violation of Receiving Water Limitation C(1) of the 1997
7 Storm Water Permit, Receiving Water Limitation VI.B of the 2015 Permit, and the
8 Clean Water Act.
9

10
11
12 95. For the Santa Clara River watershed aquatic ecosystem to regain its
13 health, and for the Santa Clara River watershed's threatened and endangered species
14 to recover and thrive, contaminated storm water discharges like those from the
15 Facility must be eliminated.
16

17 **D. SWPPP and Monitoring Violations**
18

19 96. On information and belief, Plaintiff alleges that every year during the
20 relevant statutory period, WIGGINS has failed to collect the required amount of
21 samples for the first half (July through December) and two samples for the second
22 half (January through June) and include them in a compliant annual report, despite the
23 opportunity to do so. For example, the Facility collected no samples in the second
24 half of the 2011-2012 reporting year despite the opportunity to sample four QSEs
25
26

27
28 ⁸ See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).
COMPLAINT

1 (storm events of at least 0.1 inches, during non-holiday, workdays with no rainfall in
2 the preceding 48 hours). See Storm Event Summary attached to January 17, 2017 and
3 February 7, 2017 notice letters (Exhibits A and B). Similar failures to collect
4 adequate samples occurred during the following periods: the entire 2012-2013 year
5 (despite seven QSEs), first half of 2013-2014 year (despite two QSEs), second half of
6 2013-2014 year (four QSEs), only one sample during first half of 2015-2016 year
7 (three QSEs), and only one sample taken during the first half of 2016-2017 year (two
8 QSEs).

9
10
11
12 97. Plaintiff is informed and believes that since at least 2012, Defendant
13 consistently failed to test for all necessary parameters. For example, the only sample
14 taken during the 2014-2015 reporting year (Dec. 2, 2014) did not show the results for
15 aluminum, iron, zinc, copper, or lead—thus preventing any comparison against
16 benchmarks for exceedances. See Table 1, line 2. Additionally, after reporting copper
17 and magnesium levels above benchmark/NAL values, WIGGINS failed to test for
18 either parameter in any of its subsequent samples. Nor did the Facility ever test for
19 total recoverable petroleum hydrocarbons, despite being listed in its 2015 SWPPP as a
20 constituent for which to sample.

21
22
23
24 98. On information and belief, Plaintiff alleges that Defendant violated
25 monitoring and reporting requirements through various improper and misleading
26 practices during the statutory period. For example, nearly half of all samples taken
27 were either untimely submitted to the Waterboard or taken from an invalid QSE. See
28

1 Table 1, lines 3, 5, and 7. There was a one-year delay in reporting the September 15,
2 2015 (*id.* at lines 3) sample, which WIGGINS reported aluminum levels at 2.5 mg/L
3 when lab results showed levels at 6.1 mg/L.
4

5 99. Plaintiff alleges that since at least March 21, 2012, WIGGINS did not
6 submit compliant annual reports, that were signed and certified by the appropriate
7 corporate officer, outlining the Facility's storm water controls and accurately
8 certifying compliance with the General Permit. Defendant has failed and continues to
9 fail to submit Annual Reports that comply with these reporting requirements. For
10 example, in each annual report since the filing of the 2011-2012 reporting year,
11 WIGGINS certified that: (i) a complete Annual Comprehensive Site Compliance
12 Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (ii) the
13 SWPPP's BMPs address existing potential pollutant sources and additional BMPs are
14 not needed; and (iii) the SWPPP complies with the General Industrial Permit, or will
15 otherwise be revised to achieve compliance. However, information available to
16 WISHTOYO indicates that these certifications are erroneous. For example, as
17 discussed above, samples collected from the Facility contain concentrations of
18 pollutants above EPA benchmarks, applicable NALs, and established WQS levels and
19 therefore demonstrate that the SWPPP's BMPs do not adequately address existing
20 potential pollutant sources. Additionally, at the time that the Annual Report is
21 submitted, the facility operator must report any noncompliance with the Storm Water
22 Permit in sufficient detail, including i) a description of the noncompliance and its
23 COMPLAINT

1 cause, ii) the period of noncompliance, iii) when noncompliance was resolved or
2 anticipated to be resolved, and iv) steps taken or planned to reduce and prevent
3 recurrence of the noncompliance. See 1997 Permit, § C(11)(d). WIGGINS has failed,
4 and continues to fail, to report non-compliance as required.
5

6 100. On information and belief, Plaintiff alleges that during the statutory
7 period, Defendant did not implement an adequate SWPPP for the Facility. The 2015
8 SWPPP describes only minimum BMPs for the Facility and was minimally modified
9 in December 2016 by adding two sentences regarding advance BMPs. The SWPPP
10 has not been regularly revised or updated in response to data collected since March
11 21, 2012.
12

13 101. Plaintiff alleges that the abovementioned sampling, monitoring, and
14 reporting errors indicates that WIGGINS has submitted incomplete and/or incorrect
15 annual reports that fail to comply with the General Industrial Permit. As such,
16 Defendant is in daily violation of the Permit, and every day the Facility operates
17 without reporting as required by the Permit is a separate and distinct violation of the
18 Permit and Section 301(a) of the Act. 33 U.S.C. §1311(a). WIGGINS has been in
19 daily and continuous violation of the Permit's reporting requirements every day since
20 at least March 21, 2012. These violations are ongoing. WISHTOYO will include
21 additional violations when information becomes available, including specific
22 violations of the 2015 Permit reporting requirements. See 2015 Permit, §§ XII, XVI.
23
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102. Information available to Plaintiff indicates that Defendant has not

1 fulfilled the requirements set forth in the General Permit for discharges from the
 2 Facility due to the continued discharge of contaminated storm water. Plaintiff alleges
 3 that during the statutory period, Defendant has not implemented BAT and BCT at the
 4 Facility for discharges of TSS, Fe, Al, Cu, Zn and other pollutants. As of the date of
 5 this Complaint, the Facility has not implemented adequate BAT and BCT.
 6

7
 8 103. Plaintiff is informed and believes, and thereupon alleges, that all of the
 9 violations alleged in this Complaint are ongoing and continuing.

10 **CLAIMS FOR RELIEF**

11 **FIRST CAUSE OF ACTION**

12 **Defendant's Discharges of Contaminated Storm Water in Violation of Permit** 13 **Effluent Limitations and the Act** 14 **(33.S.C. §§ 1311, 1342, 1365(a), and 1365(f))**

15 104. Plaintiff re-alleges and incorporate all of the preceding paragraphs as if
 16 fully set forth herein.

17
 18 105. WISHTOYO is informed and believes, and thereon alleges, that
 19 Defendant failed and continues to fail to reduce or prevent pollutants associated with
 20 industrial activities at the Facility from discharging from the Facility through
 21 implementation of BMPs that achieve BAT/BCT.
 22

23 106. WISHTOYO is informed and believes, and thereon alleges, that
 24 discharges of storm water containing levels of pollutants that do not achieve
 25 compliance with BAT/BCT standards from the Facility occur every time storm water
 26 discharges from the Facility. Defendant's failure to develop and/or implement BMPs
 27
 28

1 that achieve the pollutant discharge reductions attainable via BAT/ BCT at the Facility
2 is a violation of the Storm Water Permit and the Act. *See* 1997 Permit, Effluent
3 Limitation B(3); *see also* 2015 Permit, Section I(D) (Finding 32), Section V(A); *see*
4 *also* 33 U.S.C. § 1311(b).

6 107. Defendant violates and will continue to violate the Permit's Effluent
7 Limitations each and every time storm water containing levels of pollutants that do
8 not achieve BAT/BCT standards discharges from the Facility.

10 108. Each and every violation of the Permit's Effluent limitations is a separate
11 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 109. Defendant's violations of the Permit's Effluent Limitations and the Act are
14 ongoing and continuous.

16 110. By committing the acts and omissions alleged above, WIGGINS is
17 subject to an assessment of civil penalties for each and every violation of the Act
18 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
19 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

21 111. An action for injunctive relief is authorized by Act section 505(a),
22 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
23 would irreparably harm Plaintiff and the citizens of the State of California, for which
24 harm WISHTOYO has no plain, speedy, or adequate remedy at law.
25

27 112. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
28 because an actual controversy exists as to the rights and other legal relations of the

1 Parties.

2 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
3 hereafter.
4

5 **SECOND CAUSE OF ACTION**
6 **Defendant's Discharges of Contaminated Storm Water in Violation**
7 **of the Permit's Receiving Water Limitations and the Act**
8 **(33.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

9 113. Plaintiff re-alleges and incorporate all of the preceding paragraphs as if
10 fully set forth herein.

11 114. WISHTOYO is informed and believes, and thereon alleges, that
12 discharges of storm water containing levels of pollutants that adversely impact
13 human health and/or the environment from the Facility occur each time storm water
14 discharges from the Facility.
15

16 115. WISHTOYO is informed and believes, and thereon alleges, that storm
17 water containing levels of pollutants that cause or contribute to exceedances of water
18 quality standards has discharged and continues to discharge from the Facility each
19 time stormwater discharges from the Facility.
20

21 116. Plaintiff is informed and believes, and thereupon alleges, that since at least
22 March 21, 2012, Defendant has discharged polluted storm water from the Facility
23 causing or contributing to the violation of the applicable WQS and that adversely
24 impact human health or the environment in violation of the Receiving Water
25 Limitation of the General Permit.
26
27

28 117. Every day, since at least March 21, 2012, that Defendant has discharged

1 discharge polluted storm water from the Facility in violation of the General Permit is a
2 separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3 These violations are ongoing and continuous.
4

5 118. Each and every violation of the Storm Water Permit Receiving Water
6 Limitations is a separate and distinct violation of section 301(a) of the Act, 33 U.S.C.
7 § 1311(a).
8

9 119. By committing the acts and omissions alleged above, WIGGINS is
10 subject to an assessment of civil penalties for each and every violation of the Act
11 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
12 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
13

14 120. An action for injunctive relief is authorized by Act section 505(a),
15 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
16 would irreparably harm Plaintiff and the citizens of the State of California, for which
17 WISHTOYO has no plain, speedy, or adequate remedy at law.
18

19 121. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
20 because an actual controversy exists as to the rights and other legal relations of the
21 Parties.
22

23 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
24 hereafter.
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THIRD CAUSE OF ACTION

**Defendant's Failure to Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

122. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

123. Defendant has not developed and implemented an adequate SWPPP for the Facility.

124. Each day since March 21, 2012, that Defendant does not develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

125. Defendant has been in violation of the SWPPP requirements every day since March 21, 2012. Violation continues each day that an adequate SWPPP for the Facility is not developed and fully implemented.

126. By committing the acts and omissions alleged above, WIGGINS is subject to an assessment of civil penalties for each and every violation of the Act occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

127. An action for injunctive relief is authorized by Act section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm WISHTOYO has no plain, speedy, or adequate remedy at law.

128. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)

1 because an actual controversy exists as to the rights and other legal relations of the
2 Parties.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
4 hereafter.
5

6 **FOURTH CAUSE OF ACTION**
7 **Defendant's Failure to Develop and Implement an**
8 **Adequate Monitoring and Reporting Program**
9 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 129. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
11 fully set forth herein.

12 130. Defendant has not developed and implemented an adequate monitoring
13 and reporting program for the Facility.
14

15 131. Each day since March 21, 2012, that Defendant did not develop and
16 implement an adequate monitoring and reporting program for the Facility in violation
17 of the General Permit is a separate and distinct violation of the General Permit and
18 Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring
19 and analytical results are ongoing and continuous.
20

21 132. By committing the acts and omissions alleged above, WIGGINS is
22 subject to an assessment of civil penalties for each and every violation of the Act
23 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
24 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
25
26

27 133. An action for injunctive relief is authorized by Act section 505(a),
28 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above

1 would irreparably harm Plaintiff and the citizens of the State of California, for which
2 harm WISHTOYO has no plain, speedy, or adequate remedy at law.

3 134. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
4 because an actual controversy exists as to the rights and other legal relations of the
5 Parties.
6

7 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
8 hereafter.
9

10 **FIFTH CAUSE OF ACTION**
11 **Defendant's Failure to Accurately Certify Compliance in Annual Reports in**
12 **Violation of the Permit and the Act**
(33.S.C. §§ 1311, 1342, 1365(a) and 1365(f))

13 135. Plaintiff re-alleges and incorporate all of the preceding paragraphs as if
14 fully set forth herein.
15

16 136. Defendant has not accurately certified compliance with the General
17 Permit in each of the annual reports submitted to the Regional Board since at least
18 March 21, 2012.
19

20 137. Each day since at least March 21, 2012, that Defendant does not
21 accurately certify compliance with the General Permit is a separate and distinct
22 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
23 Defendant continues to be in violation of the General Permit's certification
24 requirement each day they maintain an inaccurate certification of its compliance with
25 the General Permit.
26
27
28

138. By committing the acts and omissions alleged above, WIGGINS is

1 subject to an assessment of civil penalties for each and every violation of the CWA
2 occurring from January 13, 2011 to the present, pursuant to sections 309(d) and 505
3 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
4

5 139. An action for injunctive relief is authorized by Act section 505(a),
6 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
7 would irreparably harm Plaintiff and the citizens of the State of California, for which
8 harm WISHTOYO has no plain, speedy, or adequate remedy at law.
9

10 140. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
11 because an actual controversy exists as to the rights and other legal relations of the
12 Parties.
13

14 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
15 hereafter.
16

17 **RELIEF REQUESTED**
18

19 Wherefore, Plaintiff respectfully requests that this Court grant the following
20 relief:
21

22 a. Declare Defendant(s) to have violated and to be in violation of the Act
23 as alleged herein;

24 b. Enjoin Defendant(s) from discharging polluted storm water from the
25 Facility unless authorized by the Permit;
26

27 c. Enjoin Defendant(s) from further violating the substantive and
28 procedural requirements of the Permit;

1 d. Order Defendant(s) to immediately implement storm water pollution
2 control technologies and measures that are equivalent to BAT/BCT and prevent
3 pollutants in the Facility's storm water from contributing to violations of any water
4 quality standards;

5
6 e. Order Defendant(s) to comply with the Permit's monitoring and
7 reporting requirements, including ordering supplemental monitoring to compensate for
8 past monitoring violations;

9
10 f. Order Defendant(s) to prepare a SWPPP consistent with the Permit's
11 requirements and implement procedures to regularly review and update the SWPPP;

12
13 g. Order Defendant(s) to provide Plaintiff with reports documenting the
14 quality and quantity of their discharges to waters of the United States and their efforts
15 to comply with the Act and the Court's orders;

16
17 h. Order Defendant(s) to pay civil penalties of up to \$37,500 per day per
18 violation for each violation of the Act since January 13, 2012, up to and including
19 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015
20 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and
21 40 C.F.R. §§ 19.1 - 19.4;

22
23
24 i. Order Defendant(s) to take appropriate actions to restore the quality of
25 waters impaired or adversely affected by their activities;

26
27 j. Award Plaintiff's costs (including reasonable investigative, attorney,
28 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.

1 § 1365(d); and,

2 k. Award any such other and further relief, as this Court may deem
3 appropriate.
4

5
6 Dated: 3/21, 2017

Respectfully submitted,

7
8 By: 

Gideon Kracov
Attorneys for Plaintiff

EXHIBIT A



WISHTOYO
CHUMASH FOUNDATION



January 17, 2017

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michele Wiggins-McDowell, CEO
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Paul Hurbace, Vice President
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Michael M. Wiggins
Registered Agent for Service of Process
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of Wishtoyo Foundation and Wishtoyo Foundation's Ventura Coastkeeper Program (collectively "Wishtoyo") regarding violations of the Clean Water Act¹ ("Act") and California's General Industrial Storm Water Permit² ("General Industrial Permit" or "Permit") occurring at Wiggins Lift Company's industrial facility located at 2571 Cortez Street in Oxnard, California 93036 ("Facility"). Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Act and/or related permits. Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the

¹ Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implement the same statutory mandates.

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initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of its intention to file suit. Notice must be given to the alleged violator(s), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This communication ("Notice Letter") is issued pursuant to the Act, 33 U.S.C. §§ 1365(a) and (b) and is sent to Wiggins Lift Company, Michelle Wiggins-McDowell and Paul Hurbace (collectively "Wiggins"), and to you as the responsible owners and/or operators of the Facility, in order to: a) put Wiggins, as the owner and/or operator of the Facility, on notice of violations of the General Industrial Permit occurring at the Facility, including, but not limited to, discharges of polluted stormwater into local surface waters, and b) to provide formal notice that Wishtoyo intends to file a federal enforcement action against Wiggins for its violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342. Unless the Facility and Wiggins take the actions necessary to remedy the ongoing violations of the Act and General Industrial Permit, Wishtoyo intends to file suit in U.S. District Court following the expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees, and costs. The Facility and Wiggins are subject to civil penalties for all violations of the Act occurring since January 17, 2012.³

I. BACKGROUND

A. Wishtoyo Foundation and its Ventura Coastkeeper Program

Founded in 1997, the Wishtoyo Foundation ("Wishtoyo") is a 501(c)(3) non-profit public benefit grassroots corporation organized under the laws of the State of California and located at 11182 Azahar Street, Ventura, CA 93004 and 33904 Pacific Coast Highway, Malibu, CA 90265. Wishtoyo's mission is to preserve, protect and restore Chumash culture, the culture and history of coastal communities, cultural resources, and the environment. Wishtoyo has over 700 members consisting of Ventura County's diverse residents, Chumash Native Americans, and the general public who enjoy the recreational, spiritual, cultural, and aesthetic benefits of the Santa Clara River and Ventura County's coastal marine waters and environment.

Ventura Coastkeeper is a program of Wishtoyo. Ventura Coastkeeper's mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County's inland waterbodies, coastal waters, and watersheds. Ventura Coastkeeper is also a member of the Waterkeeper Alliance, a coalition of nearly 200 member programs on six continents around the world fighting for clean water and strong communities.

³ Wiggins is liable for both violations of the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

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As a program of Wishtoyo Foundation, Ventura Coastkeeper also strives to protect, preserve, and restore the natural resources that the Chumash culture, and all cultures, depend upon. The Chumash Peoples, including members of Wishtoyo Foundation, have a long history of interaction with the Santa Clara River and Ventura's coastal waters, with the native wildlife that utilize these waterbodies, and the natural Chumash cultural resources of these water bodies, of which, the Chumash Peoples utilize to maintain their lifeways, for ap (dwelling unit) construction, for Chumash basketry, and for a variety of other cultural purposes, including religious and ceremonial ones.

The unlawful discharge of polluted storm water from Wiggins negatively affects the water quality of the El Rio Drain, Santa Clara River ("SCR"), the SCR Estuary, and ultimately into the Pacific Ocean (collectively "Receiving Waters"). Wishtoyo's members live near and/or use the Receiving Waters for domestic and drinking purposes, as well as to fish, boat, swim, surf, bird watch, view wildlife, and to engage in scientific study and cultural activities. The Facility's polluted discharges impair these uses. Thus, the interests of Wishtoyo's members have been, are being, and will continue to be adversely affected by the failure of the Wiggins to comply with the Clean Water Act.

B. The Clean Water Act and Storm Water Permitting

With every significant rainfall event, millions of gallons of polluted stormwater originating from industrial operations pour into storm drains and local waterways. The consensus among agencies and water quality experts is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Polluted discharges of storm water cause and contribute to the impairment of water bodies directly receiving flows, and also downstream waters (including heavily used estuaries and beaches) and aquatic-dependent wildlife. Although pollution and habitat destruction have drastically diminished once abundant ecosystems in Southern California, local waterways continue to serve as essential habitat for numerous plant, fish, and animal species, as well as serve important recreational and aesthetic resources. The public's use of local waterways exposes many people, often children, to toxic metals and other contaminants in storm water discharges from industrial operations like those occurring at the Facility.

The objective of the Act is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of a pollutant from any point source⁴ into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p). In California, the EPA has delegated its authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for the issuance and enforcement of the General Industrial Permit in Region 4, which covers both the Facility and Receiving Waters. In order to discharge storm

⁴ A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); see 40 C.F.R. § 122.2.

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water lawfully in California, each Facility must enroll in and comply with all terms and conditions of the Permit.

1. *The 1997 General Industrial Permit*

The 1997 Permit required permittees to meet all applicable provision of Sections 301 and 402 of the Act. These provisions require control of pollutant discharges using Best Management Practices ("BMPs") that achieve either best available technology economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent or reduce pollutants.⁵ 33 U.S.C. §§ 1311(b)(2)(A), (B). Rather than requiring the specific application of BAT or BCT techniques to each storm water discharge, the development and implementation of BMPs, and compliance with the terms and conditions of the 1997 Permit, served as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to develop and implement adequate BMPs and/or to comply with the terms and conditions of the 1997 Permit constituted a failure to subject discharges to BAT/BCT in violation of the Act.

2. *The 2015 General Industrial Permit*

The 2015 Permit retains the essential structure and mandate of the 1997 Permit, including the requirement to comply with BAT/BCT standards. The 2015 Permit requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary to achieve compliance with the Effluent Limitations and Receiving Water Limitations. In addition, the 2015 Permit requires all facility operators to sample stormwater discharges more frequently than the 1997 Permit, and to compare the analytical results of sample testing to numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate when sample testing indicates a NAL exceedance. Failure to comply with the terms and conditions of the 2015 Permit equivalent to a failure to subject discharges to BAT/BCT and constitutes a violation of the Act.

3. *Both Permits Applicable to the Facility in June 2016*

Both the 1997 Permit and the 2015 Permit generally require facility operators to i) submit a Notice of Intent ("NOI") certifying the type of activity or activities undertaken at a facility and committing the operator to comply with the terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges; iii) develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"); iv) monitor storm water discharges and authorized non-storm water discharges; and v) file complete and accurate Annual Reports by July 15 of each year, in which the operator must describe the facility, summarize the year's industrial activities, and certify compliance with the terms and conditions of the Permit. In addition to these requirements, the Permit requires that all industrial facilities collect storm water samples from multiple storm

⁵ Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), pH, biochemical oxygen demand ("BOD") and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

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events during the year, and analyze samples for various pollutants associated with all industrial activity, including Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC"),⁶ and either Total Organic Content ("TOC") or Oil and Grease ("O&G"). 1997 Permit B(5)(c)(i); 2015 Permit XI(B)(6)(a)-(b).

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).⁷ In response these challenges, Congress crafted Section 505 to encourage citizen plaintiffs to act as "private attorney's general." Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976).

Additionally, citizen plaintiffs fill a critical economic role. Failure to enforce the Act's prohibitions results in inefficient economic outcomes due to market failures commonly associated with common pool resources like the waterways and oceans. Enforcement actions under the Act's Section 505 help correct these market failures by forcing entities contributing to the problem to internalize the welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society—including the costs associated with human illness, habitat loss, wildlife disturbances, and impacts to tourism.

II. THE FACILITY, RECEIVING WATERS, AND APPLICABLE STANDARDS

A. The Facility's Industrial Activities

The Facility, operating under Waste Discharge Identification ("WDID") number 4 19i017490, is approximately 3.7 acres and consists of a single large assembly/office building, an attached storage building, several outdoor areas (some covered overhead) used for parking, loading/unloading, material storage, as well as certain industrial operations. The most recent SWPPP filed with the Regional Board ("2015 SWPPP") indicates that storm water is discharged from one (1) points on the northeast corner of the site.

The Facility is classified under Standard Industrial Classification ("SIC") Code 3537 (Industrial Trucks, Tractors, Trailers, and Stackers) and conducts fork lift truck manufacturing, which includes metal cutting, fabrication, assembly, painting, and inspection services. Equipment at the Facility includes small forklifts, overhead crane, flame cutting tools, welders with various gas mixtures, air powered hand held grinders, and paint spray equipment.

According to the 2015 SWPPP, while much of the supplies are kept inside the storage building, other materials (i.e. metal plate stock, various gasses, and oils) are kept outside in

⁶ The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

⁷ See also 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

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designated storage areas. Activities at the site that are significant to storm water management include the usage and storage of substances that are (or contain) hazardous chemicals, including but not limited to the following: gases such as propane, oxygen, acetylene, carbon dioxide; liquid hydraulic oil, waste oil, motor oil, and gear oil contained in drums and tanks; and other liquid materials including diesel, waste coolant, ethylene glycol, gasoline, coolant, and degreaser. Other potential sources of pollution from Facility activities include: particulates from waste paint sludge spent paint booth filters; rubber solids from tires used and stored at the Facility; contaminated water, oil, grease, metal ions from manufacturing and storage activities; and oil, grease, and recoverable hydrocarbons from the various equipment and manufacturing activities discussed above.

B. The Santa Clara River and the Facility's Receiving Waters

1. The Santa Clara River

Flowing approximately 116 miles from the headwaters of the San Gabriel Mountains to the Pacific Ocean through a 1,600 square mile watershed, the Santa Clara River is southern California's last naturally flowing major river system. In addition to being the largest wild river remaining in southern California, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat for endangered and rare species. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species including the endangered Southern California Steelhead, Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, Pacific Lamprey, California Red-Legged Frog, Arroyo Toad, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Least Bell's Vireo. The Santa Clara River is also a significant input to southern California's coastal waters at the Cities of San Buenaventura and Oxnard, and a healthy, unpolluted Santa Clara River from Santa Clarita through Piru, Fillmore, Santa Paula, Saticoy, El Rio, Ventura, and Oxnard provides unmatched recreational, cultural, aesthetic, and spiritual opportunities and resources in the region. In addition, the ecosystem services provided by the Santa Clara River, as recognized by the Regional Board's Water Quality Control Plan for the Los Angeles Region ("Basin Plan") include agriculture supply, groundwater recharge, freshwater replenishment, recreation, cold and warm freshwater habitat, wildlife habitat for rare, threatened, or endangered species, wetland habitat, estuarine habitat, and migration, spawning, reproduction and development habitat for aquatic organisms.⁸ Thus, it is imperative that Santa Clara River's water quality, aesthetic values, and aquatic ecosystem functions are adequately protected. In 2005, the Santa Clara River was named the "10th Most Endangered River" in the Country by the American Rivers organization due to anthropogenic impacts, such as pollution.

⁸ Specifically, the Basin Plan lists the Beneficial Uses for waters in the Santa Clara River Watershed ("Beneficial Uses") as: agriculture supply (AGR), groundwater recharge (GWR), freshwater replenishment (FRSH), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), wetland habitat (WET), estuarine habitat (EST), migration of aquatic organisms (MIGR), and spawning, reproduction and development (SPWN). See Basin Plan, pp. 2-1 - 2-5.

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Storm water from the Wiggins Facility drains to SCR Reach 1, which is approximately 7,000 feet southeast of the Facility. *See* 2015 SWPPP, p. 9. First, surface water flows to the northeast corner of the Facility and drains into the storm drain system known. *Id.*; *see also* SWPPP Wiggins Site Plan Attachment. Next, as indicated by maps maintained by the County of Ventura⁹ and the State Board,¹⁰ water is transported southwest to the SCR Reach 1 via the El Rio Drain owned by the City of Oxnard and monitored by the Ventura Countywide Storm water Quality Management Program.¹¹ From the SCR Reach 1 (Hwy 101 to SCR Estuary), water flows into the SCR Estuary, SCR Estuary Beach-Surfers Knoll, McGrath Beach, and disperses across the Ventura coastline.

The beneficial uses for these Receiving Waters specifically include agriculture supply (AGR), municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN). *See* Basin Plan, pp. 2-1 - 2-5. The Basin Plan designates the Santa Clara River surface waters adjacent to and downstream from the Wiggins Facility as potential municipal and domestic supply (MUN) beneficial uses, and existing agriculture supply (AGR) and groundwater recharge (GWR) beneficial uses. *See* Basin Plan, pp. 2-1 - 2-5. Waters designated and used for municipal, domestic, and agricultural supply can be consumed by children, pregnant women, the elderly, and farm workers.

Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic, developmental and reproductive toxicity threats to the public, and adversely affect the aquatic environment, and contribute the degradation of these already impaired waters, beaches, and recreational and wildlife resources, including the Santa Clara River's native and endangered species. For example, both the Estuary and Reach 1 of the SCR are listed as impaired for toxicity.¹² Polluted storm water discharged from the Wiggins Facility may cause and/or contribute to the impairment of water quality in the SCR, its watershed and the Estuary, and is acutely toxic to, and has sub-lethal toxicity impacts on, the Southern California Steelhead and other aquatic life in the SCR and its estuary.

For the Santa Clara River watershed aquatic ecosystem to regain its health, and for the Santa Clara River watershed's threatened and endangered species to recover and thrive, illegal, contaminated storm water discharges like those from the Wiggins Facility must be eliminated.

⁹ See Ventura Countywide Unified Storm Drain Map data, available at <http://vcstormwater.org/index.php/publications/maps/ventura-countywide-unified-storm-drain-map> (last visited Jan. 5, 2016).

¹⁰ See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).

¹¹ Water flows southerly along Cortez Street past the Ventura freeway (101 fwy.), then west across Vineyard Avenue (State Route 232), northwest along Oxnard Boulevard (Pacific Coast Highway 1), west adjacent to nearby railroad tracks, south down Ventura Road, and jettisons west into the SCR.

¹² *See footnote 10.*

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C. Applicable Standards Under the Act and Permit

The Act requires that any person discharging pollutants to waters of the United States from a point source obtain coverage under an NPDES permit, such as the General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). As described above, both the 1997 Permit and the 2015 Permit require that all dischargers meet all applicable provisions of Act's Sections 301 and 402. Thus, compliance with the General Industrial Permit constitutes compliance with the Act for purposes of stormwater discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failure to comply with the terms and conditions of the Permit, including failure to develop and implement BMPs that achieve BAT/BCT, constitutes a violation of the Act.

1. *Effluent Limitations*

The Permit's Effluent Limitation—section B(3) of the 1997 Permit and V(A) of the 2015 Permit—require dischargers to reduce or prevent pollutants in their storm water discharges through the implementation of BMPs that meet BAT standards for toxic and non-conventional pollutants, and BCT standards for conventional pollutants.¹³ The EPA published “benchmark” levels as numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite BAT and/or BCT as mandated by the Act.¹⁴ EPA's benchmarks served as objective measures for evaluating whether a facility's BMPs achieve BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State Board established the use of “benchmarks” with Numeric Action Levels (“NALs”). *See* 2015 Permit V(A). NALs are derived from, and function similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet I(D)(5). Benchmarks and NALs values represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health. The analytical results from a given facility are measured against EPA's benchmarks to determine whether BMPs are adequate to qualify as meeting the statutory mandate. An exceedance of a benchmark or NAL requires dischargers to implement improved BMPs and revise the facility SWPPP. *See* 2015 Permit Section XII. Thus, exceedances of the benchmarks and/or NALs evidence failure to comply with both the Permit and Act. Benchmarks and/or NALs have been established for core parameters (i.e. pH, TSS, O&G, SC) and other conventional industrial specific pollutants including Aluminum (“Al”), Iron (“Fe”), Zinc (“Zn”), and Copper (“Cu”). As summarized in TABLE 1 below, Wiggins must analyze sample discharges from the Facility against these benchmark/NALs.

///

¹³ Toxic pollutants are listed at 40 C.F.R. § 401.15; conventional pollutants are listed at 40 C.F.R. § 401.16.

¹⁴ *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 9, 2009 (“Multi-Sector Permit”), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

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TABLE 1
BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITY

PARAMETER/ POLLUTANT	TESTING METHOD	EPA BENCHMARK	ANNUAL NAL
pH	Field Test	6.0-9.0 s.u.	n/a
TSS	SM 2540-D	100 mg/L	100 mg/L
O&G	EPA 1664 A	15 mg/L	15 mg/L
SC	E120.1	200 uhmos/cm	200 uhmos/cm
Al	EPA 200.8	0.75 mg/L	0.75 mg/L
Fe	EPA 200.7	1.0 mg/L	1.0 mg/L
Zn	EPA 200.8	0.117 mg/L	0.26 mg/L
Cu	EPA 200.8	0.0332 mg/L	0.0332 mg/L

The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations—2 annual samples under the 1997 Permit, and 4 total samples under the 2015 Permit¹⁵—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit B(5), B(7); 2015 Permit XI(B)(1)-(5). In addition to analyzing samples for the core parameters applicable to all industrial facilities (i.e. pH, SC, TSS and O&G/TOC), each storm water sample collected must be analyzed for the following: i) additional parameters based on a facility's SIC code (1997 Permit B(5)(c)(iii); 2015 Permit XI(B)(6)(d)); ii) toxic chemical and other pollutants that are likely to be present due the specific activities and/or pollutant sources at a facility (1997 Permit B(5)(c)(ii)¹⁶; 2015 Permit XI(B)(6)(c)¹⁷); and iii) potentially additional parameters related to the receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads ("TMDL") (*see e.g.* 2015 Permit XI(B)(6)).

Further, Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of the NALs

¹⁵ The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

¹⁶ Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii).

¹⁷ Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

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demonstrate that a facility is among the worst performing facilities in the State and has failed implement pollution prevention measures required by the Permit and Act, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. And even if Wiggins submits an Exceedance Response Action Plan as required by Section XII of the 2015 Permit, the violations of Effluent Limitations V.A described at Section III of this Notice Letter are ongoing.

2. *Receiving Water Limitations*

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").¹⁸ The 2015 Permit incorporates the same standard. *See* 2015 Permit VI(A). Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California ("CTR"), 40 C.F.R. § 131.38, and the State Board's "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties" ("Basin Plan").¹⁹ For instance, the Basin Plan set the limit for Aluminum at 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of a 1 mg/L discharge for Aluminum is a separate and distinct violation of the Permit's Receiving Water Limitations.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit VI.B. Thus, any discharges containing pollutant concentrations in excess of levels known to adversely affect aquatic species and the environment are violations of the Permit.

3. *Monitoring and Reporting Requirements*

The Storm Water Permit requires that facilities develop and implement a stormwater monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure that BMPs are in place that can achieve compliance with the Permit's Effluent Limitations and Receiving Water Limitations. *See* 1997 Permit B(2); 2015 Permit XI. An effective M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the core BAT/BCT standard. The foundational elements of an adequate M&RP are the creation and implementation of a robust SWPPP that is specific to the facility and revised/improved in response to lessons learned from implementation and data collection.

As noted above, the 1997 Permit and 2015 Permit impose substantially identical requirements on covered facilities. *See* 1997 Permit B(3)- B(16), 2015 Permit X(I) and XI(A)-

¹⁸ Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

¹⁹ available at

http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

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XI(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit B(3). The 2015 Permit increased the frequency of visual observations to monthly and requires observations to be completed at the same time samples are collected. 2015 Permit XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit B(4); 2015 XI(A)(2). Dischargers must document observations, and any responses are taken to address problems observed, including revisions made to the SWPPP. 1997 Permit B(3)-(4); 2015 Permit XI(A)(2)-(3). Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining results.

III. VIOLATIONS OF THE PERMIT AND ACT AT WIGGINS FACILITY

In the years since enrolling in the Permit, Wiggins has failed to carry out its obligations under both the Permit and Act. As discussed in further detail below, the Facility is in ongoing violation of the Permit, and its violations span both the 1997 Permit and 2015 Permit. Specifically, the Facility has discharged pollutants in violation of the Permit's Effluent Limitations, failed to develop a legally adequate M&RP; failed to develop, implement and/or update a legally adequate SWPPP to ensure the development and implementation of BMPs that achieve BAT/BCT; failed to timely develop and/or submit a Level 1 ERA evaluation onto the State Board's database; and failed to submit accurate and complete Annual Reports.

A. Effluent Limitation Violations

The citizen suit provisions of the Act provide that "any citizen" may commence a suit "against any person," including a corporation, "who is alleged to be in violation of an effluent standard or limitation under this chapter." 33 U.S.C § 1365(a)(1). The Act then defines "effluent standard or limitation" to include "a permit or condition" issued under section 402. *Id.* § 1365(f)(6). Accordingly, Wishtoyo may commence a suit alleging violations of the General Industrial Permit by the Facility. *See Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (allowing citizen action for alleged stormwater permit violations holding company liable for discharges of "significant contributions of pollutants" and inadequate record keeping).

On July 1, 2015, the 2015 Permit superseded the 1997 Permit for all but enforcement purposes. Accordingly, Wiggins is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-481 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitation of an expired permit, when those limitations have been transferred to a newly issued permit, may be viewed as currently in effect").

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Wishtoyo puts Wiggins on notice that the Permit's Effluent Limitations and Receiving Water Limitations are violated each time stormwater discharges from the Facility without having been subjected to properly developed and implemented BMPs. *See Exhibit A: Storm Event Summary* (setting forth dates of significant rain events).²⁰ These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Wiggins discharges polluted stormwater in violation of Effluent Limitations or Receiving Water Limitations is a separate and distinct violation of both the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Wiggins is subject to civil penalties for all violations of the Clean Water Act detailed below occurring since January 17, 2012.

Information available to Wishtoyo indicates that the Facility has failed and continue to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through the implementation of BMPs that achieve BAT/BCT as required by the Act through the Permit. As noted above, benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT as required by the Permit's Effluent Limitations. Here, Wiggins must sample for conventional industrial pollutants (i.e. pH, SC,²¹ TSS, O&G); pollutants likely to be present at the Facility and which have been detected as present in sampling due to the Facility's specific operations such as Al, Fe, Zn, Cu and Mg, as well as other potential pollutants present at the Facility identified in the Facility SWPPP such as Total Recoverable Petroleum Hydrocarbons ("TRPH") and Lead ("Pb").²²

Notwithstanding the inadequacy of the sampling data (as discussed below), the Facility has self-reported on numerous occasions of parameter exceedances by orders of magnitude.²³ For example, zinc levels were more than seven (7) times its annual NAL benchmark during the 2012-13 reporting year. In the 2015-16 reporting year, aluminum and iron and zinc ranged between nine (9) and twenty (20) times above applicable benchmarks – even under the most favorable of calculations. The sampling data summarized in TABLE 2 on the following page demonstrates that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act's BAT/BCT mandates.

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²⁰ A significant qualified rain event (QSE) is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. Dates of significant rain events are measured at multiple locations including five stations within three miles of the approximate discharge site.

²¹ The 2015 Permit does not require facilities to analyze samples for Specific Conductance, but may be tested as an additional sampling parameter. *See General Industrial Permit, Attachment H: Sample Collection And Handling Instructions*, p. 3.

²² According to Table 5.2 Analytical Constituents of the 2015 SWPPP, Lead is to be sampled using specific analytical method (EPA 200.8), with certain annual NALs and reporting limits (0.262 and 0.005 Mg/L, respectively); Total Recoverable Petroleum Hydrocarbons is to be tested using EPA 418.1 method.

²³ Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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TABLE 2
THE FACILITY'S ANALYTICAL RESULTS AS SUBMITTED TO THE STATE

Line	Date	TSS	Al	Fe	Zn	Cu	Pb	Other
1	Benchmark/NAL	100	0.75	1.0	0.117	0.0322	0.262	0.064
3	Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
3	02/06/14	83	2.40	2.90	1.00	0.043	0.045	(Mg) 0.15 ^c
4	12/02/14	110	NT	NT	NT	NT	NT	NT
5	09/15/15 ^d	340	6.10	14.00	2.50	NT	0.240	NT
6	01/05/16	170	4.70	9.90	0.99	NT	0.160	NT
7	03/07/16 ^e	360	7.10	17.0	2.20	NT	0.170	NT
8	03/11/16	950	13.0	17.0	4.30	NT	0.460	NT

**Red indicates values reported by Wiggins exceeding applicable Effluent Limitations and/or Water Quality Limitations.*

^a Not detected above method detection limit according to the lab.

^b Not tested by Wiggins.

^c Magnesium detected under analytical method EPA 200.7, with an annual benchmark/NAL of 0.064 mg/L. See Permit, Table 2: Parameter NAL Values, Test Methods, and Reporting Units

^d Sample untimely uploaded to SMARTS database on December 13, 2016—over one year after due date.

^e Invalid Qualified Storm Event since Facility likely experienced discharge within proceeding 48 hours on Mar. 5 (0.23 in.) and Mar. 6 (0.86 in.). See Exhibit A: Storm Event Summary.

The results of storm water sample analysis, to the extent Wiggins complied with its sampling requirements (lines 3-8), indicated consistent exceedances of applicable benchmarks for multiple parameters – up to 8x above parameters for TSS, 13x for Al, 17x for Fe and 40x for Zn.

Wiggins also failed to timely submit the results from its Sep. 15, 2015 sample containing high levels of multiple parameters (i.e. TSS, SC, Al, Fe, and Zn) (line 5). Only after receiving a Level 1 Status Notification email (Sep. 23, 2016) and letter (Dec. 7, 2016) did the Facility submit the results in its Ad Hoc Monitoring Report (Dec. 13, 2016).

These discharge violations are ongoing and will continue every time Wiggins discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent

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Limitation V.A. is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in TABLE 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of an NAL benchmark demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.²⁴

B. Receiving Water Limitation Violations²⁵

1. *Primary Receiving Water Limitation*

The Basin Plan identifies beneficial uses of the Receiving Waters to include, among others, municipal and domestic water supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The Basin Plan provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...”²⁶ The Basin Plan provides a Maximum Contaminant Level (“MCL”) for Al of 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of 1 mg/L for Aluminum (set forth in Table 2) in the Facility’s storm water discharges is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Storm Water Permit, Receiving Water Limitation VI.A of the 2015 Permit and the Clean Water Act.

2. *Secondary Receiving Water Limitations*

Wishtoyo’s review of the sampling data reported to the State and Regional Boards demonstrates that the Facility has discharged and continues to discharge polluted storm water containing pollutant concentrations that violate the Permit’s secondary Receiving Water Limitations. Discharges of toxic metals such as iron, aluminum, copper, lead, and zinc from the Facility into Receiving Waters cause or contribute to: acute and chronic toxicity and sublethal toxicity impacts to aquatic life and aquatic plants; change in the diversity and abundance of aquatic life; change in aquatic community structure and function; impacts to metabolism and

²⁴ “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

²⁵ As described above, the primary Receiving Water Limitation requires that industrial storm water discharges not cause or contribute to an exceedance of applicable WSQ, including those established by EPA, contained in a Statewide Water Quality Control Plan, the CTR or set in the Basin Plan. 1997 Permit C(2); 2015 Permit VI(A). The secondary Receiving Water Limitation requires that industrial storm water discharges not adversely affect human health or the environment. 1997 Permit C(1); 2015 Permit VI(B).

²⁶ Basin Plan at 3-8.

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osmoregulation of aquatic life; change in the structure and quality on benthic invertebrate habitat and food resources leading to decline in benthic invertebrate populations and diversity; and increases in aquatic organisms dietary supply of metals that can result in toxicity effects that ripple through an ecosystem's food chain. Both the Estuary and Reach 1 of the SCR to which Wiggins discharges are listed as impaired for toxicity.²⁷ Polluted storm water discharged from the Wiggins Facility causes and/or contributes to the impairment of water quality in the SCR, SCR Estuary, and the SCR watershed which is acutely toxic to, and have sub-lethal impacts on, the Southern California Steelhead and other aquatic life in the SCR and the SCR Estuary. Therefore, the stormwater discharges from the Facility adversely impact human health and the environment in violation of Receiving Water Limitation C(1) of the 1997 Storm Water Permit, Receiving Water Limitation VI.B of the 2015 Permit, and the Clean Water Act.

Wishtoyo puts Wiggins on notice that the 2015 Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility including each event summarized in Table 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged. Each time discharges of storm water from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitations C(1) of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1321(a). Each time discharges of storm water from the Facility violate applicable WQS, is a separate and distinct violation of Receiving Water Limitations C(2) of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 131(a).

C. Monitoring and Reporting Program Violation

As described above, the Permit requires Wiggins to develop and implement an M&RP that monitors pollutants in the Facility's discharges, and then to make commensurate revisions to its BMPs to ensure compliance with the Permit and Act. Wiggins has been and continues to conduct operations at the Facility with a legally inadequate and poorly implemented M&RP. Wishtoyo's principal concerns are the Facility's failure to collect the required number of storm water samples, and its failure to analyze samples collected for all parameters required by the Permit. Among others, the following constitute the principal deficiencies in the M&RP at the Facility:

- *Inadequate Sampling and Reporting Frequency*—every year between the 2011-12 and 2015-16 storm water years, the Facility has failed to collect an adequate number samples during the relevant reporting period and report them in a compliant annual report, despite the opportunity to do so. For example, the Facility collected no samples in the second reporting period (Jan. 1 – Jun. 30) for storm year 2011-12, despite having nine (9) rain events of at least 0.1 inches, four (4) of which were during non-holiday, workdays and with no rainfall in the preceding 48 hours (i.e. opportunities to test). See Exhibit A: Storm Event Summary. Similarly, the Facility collected no samples during the entire 2012-13 year (22 events, 7 opportunities); nor the first half of the 2013-14 year (4 events, 2 opportunities); nor the second half of 2013-14 (10 events, 4 opportunities); only 1 sample

²⁷ See footnote 10.

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during first half of 2015-16 (4 events, 3 opportunities), and no samples were taken during the recently completed first half of 2016-17 (8 events, 2 opportunities).

- *Incomplete Sample Results*—on numerous occasions, the Facility has failed to test sample for all necessary parameters. For example, the only sample taken during the 2014-15 reporting year (Dec. 2, 2014) did not show the results for aluminum, iron, zinc, copper, or lead—thus preventing any comparison against benchmarks for exceedances. *See* Table 2: Facility's Analytical Results, line 4). Additionally, after reporting copper and magnesium levels above annual benchmarks (33 and 134 percent, respectively), the Facility failed to test for either parameter in all of its subsequent samples.
- *Inaccurate and Misleading Reporting*—As discussed in section C.A. "Effluent Limitation Violations," the Facility submitted samples that were invalid (Mar. 7, 2016) and untimely (Sep. 15, 2015). Additionally, when finally submitting the data for the Sept. 15, 2015 sample, the Facility reported aluminum levels at 2.5 mg/L, despite the original results clearly showing levels at 6.1 mg/L.
- *Incorrect Testing Methods*—the Facility has repeatedly failed to use the appropriate testing method when testing samples. Although EPA requires its 200.8 testing method when testing for aluminum, cadmium, copper, lead, nickel, and zinc, the samples taken submitted by the Facility consistently used EPA's 200.7 methods, including multiple parameters in Feb. 6, 2014 sample and all four (4) samples taken during the 2015-16 reporting year.
- *Failure to Test for Sufficient Range of Pollutants*—the Facility operates as a lift truck manufacturer where activities threaten the discharge of various gases, oils, and liquids (e.g. propane, acetylene, hydraulic oil, waste/motor/gear oil, diesel, gasoline, new and waste coolant, ethylene glycol, degreaser, etc.). Under the 1997 Permit, facilities must analyze stormwater samples for "toxic chemicals and other pollutants that are likely to be present in stormwater discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze stormwater samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c). Despite these clear provisions requiring the Facility to augment its analysis of storm water samples beyond requirements imposed on all industrial facilities classified under SIC Code 3537, the Facility regularly tested only the minimum parameters. The Facility failed to take proper action, including continued sampling of storm water discharges for copper and magnesium and other constituents, after the copper or magnesium exceedances in Feb. 2014, as discussed above. Nor did the Facility ever test for total recoverable petroleum hydrocarbons despite being listed as a constituent to sample in its 2015 SWPPP. *See* Table 5.2, p. 28.
- *Failure to Complete ERA and Other Corrective Actions*—to date, the Facility has not completed and reported the required ERA evaluation for its effluent limitations violations. After submitting its 2015-16 Annual Report, the Regional Board notified Wiggins by courtesy email on Sep. 23, 2016 that the Facility needed to take action: (i) have an ERA

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performed identifying necessary BMPs by October 1, 2016; (ii) electronically submit the ERA onto the State Board's SMARTS database, implement all additional BMPs, and revise its SWPPP accordingly by Jan. 1, 2017; and (iii) submit the revised SWPPP onto SMARTS by Feb. 1, 2017. After missing the Oct. 2016 deadline, the Regional Board again notified Wiggins of these deadlines in its letter dated Dec. 7, 2016. As of Jan. 1, 2017, Wiggins has submitted no evidence indicating any of these requirements have or will be satisfied.

Wiggins' failure to conduct sampling and monitoring as required by the General Industrial Permit demonstrates that it has failed to develop, implement, and/or revise a legally adequate M&RP, and is in violation of the Act. Every day that the Facility conducts operations in violation of the specific monitoring requirements of the Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Permit and the Act. Wiggins has been in daily and continuous violation of the Permit's M&RP requirements every day since at least January 17, 2012. These violations are ongoing, and Wishtoyo will include additional violations when information becomes available.

D. Failure to Prepare, Implement, Review and Update an Adequate SWPPP

Under the Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities. Sections A(1) and E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. 1997 Permit A(2), 2015 Permit X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit A(9)-(10), 2015 Permit X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of

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industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. 2015 Permit X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. 2015 Permit X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. 2015 Permit Factsheet I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. 2015 Permit X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. 2015 Permit X(H)(2). The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. 2015 Permit X(H)(4), (5).

Despite these clear SWPPP requirements, Wiggins has been conducting and continues to conduct industrial operations at the Facility without a legally adequate SWPPP. Wishtoyo's principal concern with the Facility's SWPPP is that it fails to develop effective BMPs for acknowledged sources of pollution which have exceeded effluent limitations – demonstrating its legal inadequacy since it does not achieve compliance with the Permit. The Facility must revise its SWPPP to incorporate and implement effective BMPs to prevent continued discharges of contaminants.

E. Failure to File True and Correct Annual Reports

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. See 2015 Permit, Section XVI.

Wiggins has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. Information available to Wishtoyo indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmarks, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. As previously described, the Facility has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, Wiggins is in daily violation of the Permit. Every day the Facility conducts operations without reporting as required by the Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Wiggins has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least January 17, 2012. These violations are ongoing,

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and Wishtoyo will include additional violations when information becomes available, including, specifically, violations of the 2015 Permit reporting requirements. See 2015 Permit XII and XVI.

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Wishtoyo puts Wiggins, Michelle Wiggins-McDowell and Paul Hurbace on notice that they are the entities responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, Wishtoyo puts Wiggins on notice that it intends to include those persons in this action.

V. NAME AND ADDRESS OF NOTICING PARTY

Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and its Ventura Coastkeeper Program
9452 Telephone Rd #432
Ventura, CA 93004
805-823-3301

VI. COUNSEL

Please direct all communications to legal counsel retained by Wishtoyo for this matter:

Gideon Kracov
Law Office of Gideon Kracov
801 Grand Avenue, Floor 11
Los Angeles, CA 90017
gk@gideonlaw.net
213-629-2071

and

Jason A. Weiner
General Counsel
Wishtoyo Foundation & Ventura Coastkeeper
9452 Telephone Rd. #432
Ventura, CA 93004
jweiner.venturacoastkeeper@wishtoyo.org
805-823-3301

VII. PENALTIES

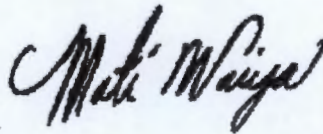
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the Facility to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, Wishtoyo will seek injunctive relief to prevent further violations of the Act pursuant to Sections

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505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Wishtoyo believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. Wishtoyo intends to file a citizen suit under Section 505(a) of the Act against Wiggins, the Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Wishtoyo would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, Wishtoyo suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as Wishtoyo does not intend to delay the filing of a complaint in federal court.

Sincerely,



Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and Wishtoyo Foundation's Ventura
Coastkeeper Program

Attachment A – Rain Event Summary for the Facility: 2012 through 2017

Cc: Loretta Lynch, U.S. Department of Justice
Gina McCarthy, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
Samuel Unger, Regional Water Quality Control Board (Region 4)
DOJ, Citizen Suit Coordinator

VIA U.S. CERTIFIED MAIL

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.

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Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Samuel Unger, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Citizen Suit Coordinator
DOJ-Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

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Exhibit A

STORM EVENT SUMMARY: January 2012 - December 2017

Days with Rainfall above 0.1 inches

https://www.wunderground.com/history/airport/KOXR/2016/12/22/CustomHistory.html?dayend=28&monthend=12&yearend=2016&req_city=&req_state=&req_statename=&reqdb.zip=&reqdb.magic=&reqdb.wmo= last accessed 1/13/17

Date (mm/dd/yy)	Rainfall (inches)
01/21/12	0.91
01/23/12	0.71
03/17/12	0.73
03/25/12	1.56
04/10/12	0.23
04/11/12	0.77
04/13/12	0.37
04/25/12	0.10
04/26/12	0.11
11/28/12	0.11
11/29/12	0.22
11/30/12	0.31
12/01/12	0.16
12/02/12	0.42
12/18/12	0.15
12/23/12	0.12
12/24/12	0.47
12/29/12	0.11
01/06/13	0.13

01/24/13	0.54
01/25/13	0.14
01/26/13	0.12
02/19/13	0.14
03/07/13	0.54
03/08/13	0.34
03/31/13	0.16
05/06/13	0.15
11/20/13	0.27
11/21/13	0.21
11/29/13	0.12
12/07/13	0.24
02/06/14	0.23
02/24/14	0.54
02/25/14	0.14
02/26/14	0.68
02/27/14	0.69
02/28/14	2.25
03/01/14	0.79
03/31/14	0.15
10/31/14	0.49

12/02/14	1.31
12/03/14	0.38
12/11/14	0.16
12/12/14	1.86
12/17/14	0.21
01/10/15	0.94
01/11/15	0.58
01/26/15	0.12
02/07/15	0.20
02/22/15	0.14
02/28/15	0.30
03/01/15	0.21
04/07/15	0.12
05/14/15	0.13
06/09/15	0.16
07/18/15	0.26
09/15/15	0.61
10/04/15	0.38
12/19/15	0.26
01/05/16	1.36
01/06/16	0.81

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01/07/16	0.42
01/19/16	0.17
01/31/16	0.39
02/17/16	0.22
02/18/16	0.10
03/05/16	0.23
03/06/16	0.86
03/07/16	0.34
03/11/16	0.75

04/09/16	0.39
10/28/16	0.21
10/30/16	0.16
11/20/16	0.46
11/26/16	0.51
12/15/16	0.52
12/16/16	0.28
12/22/16	0.10
12/23/16	1.47

12/30/16	0.31
1/4/17	0.70
1/5/17	0.37
1/7/17	0.37
1/9/17	0.82
1/11/17	0.32
1/12/17	.016

* ~~Red~~ indicates a qualified significant rain event (QSE) on a non-holiday, workday per Wiggins' 2015 SWPPP.

** A QSE is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility, with no discharges occurring within the preceding 48 hours.

*** Historical rainfall data within the relevant area is measured at multiple weather stations including stations KCAOXNAR 9 (34.218, -119.169), KCAOXNAR 18 (34.228, -119.186), KCAOXNAR 17 (34.257, -119.149), KCAOXNAR 5 (34.211, -119.141), and KCAOXNAR 11 (34.221, -119.216); all located between 0.55 and 2.9 miles from the approximate discharge site (34.232, -119.167), as measured by online mapping tools (www.sunearthtools.com/tools/distance.php).

EXHIBIT B



WISHTOYO
CHUMASH FOUNDATION



February 7, 2017

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michele Wiggins-McDowell, CEO
Wiggins Lift Co., Inc.
2571 Cortez Street
Oxnard, California 93036

Paul Hurbace, Vice President
Wiggins Lift Co., Inc.
2571 Cortez Street
Oxnard, California 93036

Michael M. Wiggins
Registered Agent for Service of Process
Wiggins Lift Co., Inc.
2571 Cortez Street
Oxnard, California 93036

**Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution
Control Act**

To Whom It May Concern:

I am writing on behalf of Wishtoyo Foundation and Wishtoyo Foundation's Ventura Coastkeeper Program (collectively "Wishtoyo") regarding violations of the Clean Water Act¹ ("Act") and California's General Industrial Storm Water Permit² ("General Industrial Permit" or "Permit") occurring at Wiggins Lift Co., Inc.'s industrial facility located at 2571 Cortez Street in Oxnard, California 93036 ("Facility"). Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Act and/or related permits. Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the

¹ Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implement the same statutory mandates.

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initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of its intention to file suit. Notice must be given to the alleged violator(s), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This communication ("Notice Letter") is issued pursuant to the Act, 33 U.S.C. §§ 1365(a) and (b) and is sent to Wiggins Lift Co., Inc., Michelle Wiggins-McDowell and Paul Hurbace (collectively "Wiggins"), and to you as the responsible owners and/or operators of the Facility, in order to: a) put Wiggins, as the owner and/or operator of the Facility, on notice of violations of the General Industrial Permit occurring at the Facility, including, but not limited to, discharges of polluted stormwater into local surface waters, and b) to provide formal notice that Wishtoyo intends to file a federal enforcement action against Wiggins for its violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342. Unless the Facility and Wiggins take the actions necessary to remedy the ongoing violations of the Act and General Industrial Permit, Wishtoyo intends to file suit in U.S. District Court following the expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees, and costs. The Facility and Wiggins are subject to civil penalties for all violations of the Act occurring since February 7, 2012.³

I. BACKGROUND

A. Wishtoyo Foundation and its Ventura Coastkeeper Program

Founded in 1997, the Wishtoyo Foundation ("Wishtoyo") is a 501(c)(3) non-profit public benefit grassroots corporation organized under the laws of the State of California and located at 11182 Azahar Street, Ventura, CA 93004 and 33904 Pacific Coast Highway, Malibu, CA 90265. Wishtoyo's mission is to preserve, protect and restore Chumash culture, the culture and history of coastal communities, cultural resources, and the environment. Wishtoyo has over 700 members consisting of Ventura County's diverse residents, Chumash Native Americans, and the general public who enjoy the recreational, spiritual, cultural, and aesthetic benefits of the Santa Clara River and Ventura County's coastal marine waters and environment.

Ventura Coastkeeper is a program of Wishtoyo. Ventura Coastkeeper's mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County's inland waterbodies, coastal waters, and watersheds. Ventura Coastkeeper is also a member of the Waterkeeper Alliance, a coalition of nearly 200 member programs on six continents around the world fighting for clean water and strong communities.

³ Wiggins is liable for both violations of the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

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As a program of Wishtoyo Foundation, Ventura Coastkeeper also strives to protect, preserve, and restore the natural resources that the Chumash culture, and all cultures, depend upon. The Chumash Peoples, including members of Wishtoyo Foundation, have a long history of interaction with the Santa Clara River and Ventura's coastal waters, with the native wildlife that utilize these waterbodies, and the natural Chumash cultural resources of these water bodies, of which, the Chumash Peoples utilize to maintain their lifeways, for ap (dwelling unit) construction, for Chumash basketry, and for a variety of other cultural purposes, including religious and ceremonial ones.

The unlawful discharge of polluted storm water from Wiggins negatively affects the water quality of the El Rio Drain, Santa Clara River ("SCR"), the SCR Estuary, and ultimately into the Pacific Ocean (collectively "Receiving Waters"). Wishtoyo's members live near and/or use the Receiving Waters for domestic and drinking purposes, as well as to fish, boat, swim, surf, bird watch, view wildlife, and to engage in scientific study and cultural activities. The Facility's polluted discharges impair these uses. Thus, the interests of Wishtoyo's members have been, are being, and will continue to be adversely affected by the failure of the Wiggins to comply with the Clean Water Act.

B. The Clean Water Act and Storm Water Permitting

With every significant rainfall event, millions of gallons of polluted stormwater originating from industrial operations pour into storm drains and local waterways. The consensus among agencies and water quality experts is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Polluted discharges of storm water cause and contribute to the impairment of water bodies directly receiving flows, and also downstream waters (including heavily used estuaries and beaches) and aquatic-dependent wildlife. Although pollution and habitat destruction have drastically diminished once abundant ecosystems in Southern California, local waterways continue to serve as essential habitat for numerous plant, fish, and animal species, as well as serve important recreational and aesthetic resources. The public's use of local waterways exposes many people, often children, to toxic metals and other contaminants in storm water discharges from industrial operations like those occurring at the Facility.

The objective of the Act is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of a pollutant from any point source⁴ into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p). In California, the EPA has delegated its authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for the issuance and enforcement of the General Industrial Permit in Region 4, which covers both the Facility and Receiving Waters. In order to discharge storm

⁴ A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); see 40 C.F.R. § 122.2.

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water lawfully in California, each Facility must enroll in and comply with all terms and conditions of the Permit.

1. *The 1997 General Industrial Permit*

The 1997 Permit required permittees to meet all applicable provision of Sections 301 and 402 of the Act. These provisions require control of pollutant discharges using Best Management Practices ("BMPs") that achieve either best available technology economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent or reduce pollutants.⁵ 33 U.S.C. §§ 1311(b)(2)(A), (B). Rather than requiring the specific application of BAT or BCT techniques to each storm water discharge, the development and implementation of BMPs, and compliance with the terms and conditions of the 1997 Permit, served as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to develop and implement adequate BMPs and/or to comply with the terms and conditions of the 1997 Permit constituted a failure to subject discharges to BAT/BCT in violation of the Act.

2. *The 2015 General Industrial Permit*

The 2015 Permit retains the essential structure and mandate of the 1997 Permit, including the requirement to comply with BAT/BCT standards. The 2015 Permit requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary to achieve compliance with the Effluent Limitations and Receiving Water Limitations. In addition, the 2015 Permit requires all facility operators to sample stormwater discharges more frequently than the 1997 Permit, and to compare the analytical results of sample testing to numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate when sample testing indicates a NAL exceedance. Failure to comply with the terms and conditions of the 2015 Permit equivalent to a failure to subject discharges to BAT/BCT and constitutes a violation of the Act.

3. *Both Permits Applicable to the Facility in June 2016*

Both the 1997 Permit and the 2015 Permit generally require facility operators to i) submit a Notice of Intent ("NOI") certifying the type of activity or activities undertaken at a facility and committing the operator to comply with the terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges; iii) develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"); iv) monitor storm water discharges and authorized non-storm water discharges; and v) file complete and accurate Annual Reports by July 15 of each year, in which the operator must describe the facility, summarize the year's industrial activities, and certify compliance with the terms and conditions of the Permit. In addition to these requirements, the Permit requires that all industrial facilities collect storm water samples from multiple storm

⁵ Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), pH, biochemical oxygen demand ("BOD") and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

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events during the year, and analyze samples for various pollutants associated with all industrial activity, including Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC")⁶, and either Total Organic Content ("TOC") or Oil and Grease ("O&G"). 1997 Permit B(5)(c)(i); 2015 Permit XI(B)(6)(a)-(b).

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).⁷ In response these challenges, Congress crafted Section 505 to encouraged citizen plaintiffs to act as "private attorney's general." Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976).

Additionally, citizen plaintiffs fill a critical economic role. Failure to enforce the Act's prohibitions results in inefficient economic outcomes due to market failures commonly associated with common pool resources like the waterways and oceans. Enforcement actions under the Act's Section 505 help correct these market failures by forcing entities contributing to the problem to internalize the welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society—including the costs associated with human illness, habitat loss, wildlife disturbances, and impacts to tourism.

II. THE FACILITY, RECEIVING WATERS, AND APPLICABLE STANDARDS

A. The Facility's Industrial Activities

The Facility, operating under Waste Discharge Identification ("WDID") number 4 19i017490, is approximately 3.7 acres and consists of a single large assembly/office building, an attached storage building, several outdoor areas (some covered overhead) used for parking, loading/unloading, material storage, as well as certain industrial operations. The most recent SWPPP filed with the Regional Board ("2015 SWPPP") indicates that storm water is discharged from one (1) points on the northeast corner of the site.

The Facility is classified under Standard Industrial Classification ("SIC") Code 3537 (Industrial Trucks, Tractors, Trailers, and Stackers) and conducts fork lift truck manufacturing, which includes metal cutting, fabrication, assembly, painting, and inspection services. Equipment at the Facility includes small forklifts, overhead crane, flame cutting tools, welders with various gas mixtures, air powered hand held grinders, and paint spray equipment.

According to the 2015 SWPPP, while much of the supplies are kept inside the storage building, other materials (i.e. metal plate stock, various gasses, and oils) are kept outside in

⁶ The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

⁷ See also 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

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designated storage areas. Activities at the site that are significant to storm water management include the usage and storage of substances that are (or contain) hazardous chemicals, including but not limited to the following: gases such as propane, oxygen, acetylene, carbon dioxide; liquid hydraulic oil, waste oil, motor oil, and gear oil contained in drums and tanks; and other liquid materials including diesel, waste coolant, ethylene glycol, gasoline, coolant, and degreaser. Other potential sources of pollution from Facility activities include: particulates from waste paint sludge spent paint booth filters; rubber solids from tires used and stored at the Facility; contaminated water, oil, grease, metal ions from manufacturing and storage activities; and oil, grease, and recoverable hydrocarbons from the various equipment and manufacturing activities discussed above.

B. The Santa Clara River and the Facility's Receiving Waters

1. The Santa Clara River

Flowing approximately 116 miles from the headwaters of the San Gabriel Mountains to the Pacific Ocean through a 1,600 square mile watershed, the Santa Clara River is southern California's last naturally flowing major river system. In addition to being the largest wild river remaining in southern California, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat for endangered and rare species. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species including the endangered Southern California Steelhead, Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, Pacific Lamprey, California Red-Legged Frog, Arroyo Toad, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Least Bell's Vireo. The Santa Clara River is also a significant input to southern California's coastal waters at the Cities of San Buenaventura and Oxnard, and a healthy, unpolluted Santa Clara River from Santa Clarita through Piru, Fillmore, Santa Paula, Saticoy, El Rio, Ventura, and Oxnard provides unmatched recreational, cultural, aesthetic, and spiritual opportunities and resources in the region. In addition, the ecosystem services provided by the Santa Clara River, as recognized by the Regional Board's Water Quality Control Plan for the Los Angeles Region ("Basin Plan") include agriculture supply, groundwater recharge, freshwater replenishment, recreation, cold and warm freshwater habitat, wildlife habitat for rare, threatened, or endangered species, wetland habitat, estuarine habitat, and migration, spawning, reproduction and development habitat for aquatic organisms.⁸ Thus, it is imperative that Santa Clara River's water quality, aesthetic values, and aquatic ecosystem functions are adequately protected. In 2005, the Santa Clara River was named the "10th Most Endangered River" in the Country by the American Rivers organization due to anthropogenic impacts, such as pollution.

⁸ Specifically, the Basin Plan lists the Beneficial Uses for waters in the Santa Clara River Watershed ("Beneficial Uses") as: agriculture supply (AGR), groundwater recharge (GWR), freshwater replenishment (FRSH), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), wetland habitat (WET), estuarine habitat (EST), migration of aquatic organisms (MIGR), and spawning, reproduction and development (SPWN). See Basin Plan, pp. 2-1 - 2-5.

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Storm water from the Wiggins Facility drains to SCR Reach 1, which is approximately 7,000 feet southeast of the Facility. *See* 2015 SWPPP, p. 9. First, surface water flows to the northeast corner of the Facility and drains into the storm drain system known. *Id.*; *see also* SWPPP Wiggins Site Plan Attachment. Next, as indicated by maps maintained by the County of Ventura⁹ and the State Board,¹⁰ water is transported southwest to the SCR Reach 1 via the El Rio Drain owned by the City of Oxnard and monitored by the Ventura Countywide Storm water Quality Management Program.¹¹ From the SCR Reach 1 (Hwy 101 to SCR Estuary), water flows into the SCR Estuary, SCR Estuary Beach-Surfers Knoll, McGrath Beach, and disperses across the Ventura coastline.

The beneficial uses for these Receiving Waters specifically include agriculture supply (AGR), municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN). *See* Basin Plan, pp. 2-1 - 2-5. The Basin Plan designates the Santa Clara River surface waters adjacent to and downstream from the Wiggins Facility as potential municipal and domestic supply (MUN) beneficial uses, and existing agriculture supply (AGR) and groundwater recharge (GWR) beneficial uses. *See* Basin Plan, pp. 2-1 - 2-5. Waters designated and used for municipal, domestic, and agricultural supply can be consumed by children, pregnant women, the elderly, and farm workers.

Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic, developmental and reproductive toxicity threats to the public, and adversely affect the aquatic environment, and contribute the degradation of these already impaired waters, beaches, and recreational and wildlife resources, including the Santa Clara River's native and endangered species. For example, both the Estuary and Reach 1 of the SCR are listed as impaired for toxicity.¹² Polluted storm water discharged from the Wiggins Facility may cause and/or contribute to the impairment of water quality in the SCR, its watershed and the Estuary, and is acutely toxic to, and has sub-lethal toxicity impacts on, the Southern California Steelhead and other aquatic life in the SCR and its estuary.

For the Santa Clara River watershed aquatic ecosystem to regain its health, and for the Santa Clara River watershed's threatened and endangered species to recover and thrive, illegal, contaminated storm water discharges like those from the Wiggins Facility must be eliminated.

⁹ See Ventura Countywide Unified Storm Drain Map data, available at <http://vcstormwater.org/index.php/publications/maps/ventura-countywide-unified-storm-drain-map> (last visited Jan. 5, 2016).

¹⁰ See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).

¹¹ Water flows southerly along Cortez Street past the Ventura freeway (101 fwy.), then west across Vineyard Avenue (State Route 232), northwest along Oxnard Boulevard (Pacific Coast Highway 1), west adjacent to nearby railroad tracks, south down Ventura Road, and jettisons west into the SCR

¹² *See footnote 10.*

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C. Applicable Standards Under the Act and Permit

The Act requires that any person discharging pollutants to waters of the United States from a point source obtain coverage under an NPDES permit, such as the General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). As described above, both the 1997 Permit and the 2015 Permit require that all dischargers meet all applicable provisions of Act's Sections 301 and 402. Thus, compliance with the General Industrial Permit constitutes compliance with the Act for purposes of stormwater discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failure to comply with the terms and conditions of the Permit, including failure to develop and implement BMPs that achieve BAT/BCT, constitutes a violation of the Act.

1. *Effluent Limitations*

The Permit's Effluent Limitation—section B(3) of the 1997 Permit and V(A) of the 2015 Permit—require dischargers to reduce or prevent pollutants in their storm water discharges through the implementation of BMPs that meet BAT standards for toxic and non-conventional pollutants, and BCT standards for conventional pollutants.¹³ The EPA published “benchmark” levels as numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite BAT and/or BCT as mandated by the Act.¹⁴ EPA's benchmarks served as objective measures for evaluating whether a facility's BMPs achieve BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State Board established the use of “benchmarks” with Numeric Action Levels (“NALs”). *See* 2015 Permit V(A). NALs are derived from, and function similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet I(D)(5). Benchmarks and NALs values represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health. The analytical results from a given facility are measured against EPA's benchmarks to determine whether BMPs are adequate to qualify as meeting the statutory mandate. An exceedance of a benchmark or NAL requires dischargers to implement improved BMPs and revise the facility SWPPP. *See* 2015 Permit Section XII. Thus, exceedances of the benchmarks and/or NALs evidence failure to comply with both the Permit and Act. Benchmarks and/or NALs have been established for core parameters (i.e. pH, TSS, O&G, SC) and other conventional industrial specific pollutants including Aluminum (“Al”), Iron (“Fe”), Zinc (“Zn”), and Copper (“Cu”). As summarized in TABLE 1 below, Wiggins must analyze sample discharges from the Facility against these benchmark/NALs.

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¹³ Toxic pollutants are listed at 40 C.F.R. § 401.15; conventional pollutants are listed at 40 C.F.R. § 401.16.

¹⁴ *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 9, 2009 (“Multi-Sector Permit”), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

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TABLE 1
BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITY

PARAMETER/ POLLUTANT	TESTING METHOD	EPA BENCHMARK	ANNUAL NAL
pH	Field Test	6.0-9.0 s.u.	n/a
TSS	SM 2540-D	100 mg/L	100 mg/L
O&G	EPA 1664 A	15 mg/L	15 mg/L
SC	E120.1	200 uhmos/cm	200 uhmos/cm
Al	EPA 200.8	0.75 mg/L	0.75 mg/L
Fe	EPA 200.7	1.0 mg/L	1.0 mg/L
Zn	EPA 200.8	0.117 mg/L	0.26 mg/L
Cu	EPA 200.8	0.0332 mg/L	0.0332 mg/L

The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations—2 annual samples under the 1997 Permit, and 4 total samples under the 2015 Permit¹⁵—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit B(5), B(7); 2015 Permit XI(B)(1)-(5). In addition to analyzing samples for the core parameters applicable to all industrial facilities (i.e. pH, SC, TSS and O&G/TOC), each storm water sample collected must be analyzed for the following: i) additional parameters based on a facility's SIC code (1997 Permit B(5)(c)(iii); 2015 Permit XI(B)(6)(d)); ii) toxic chemical and other pollutants that are likely to be present due the specific activities and/or pollutant sources at a facility (1997 Permit B(5)(c)(ii)¹⁶; 2015 Permit XI(B)(6)(c)¹⁷; and iii) potentially additional parameters related to the receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads ("TMDL") (*see e.g.* 2015 Permit XI(B)(6)).

Further, Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of the NALs

¹⁵ The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

¹⁶ Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii).

¹⁷ Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

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demonstrate that a facility is among the worst performing facilities in the State and has failed implement pollution prevention measures required by the Permit and Act, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. And even if Wiggins submits an Exceedance Response Action Plan as required by Section XII of the 2015 Permit, the violations of Effluent Limitations V.A described at Section III of this Notice Letter are ongoing.

2. *Receiving Water Limitations*

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").¹⁸ The 2015 Permit incorporates the same standard. *See* 2015 Permit VI(A). Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California ("CTR"), 40 C.F.R. § 131.38, and the State Board's "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties" ("Basin Plan").¹⁹ For instance, the Basin Plan set the limit for Aluminum at 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of a 1 mg/L discharge for Aluminum is a separate and distinct violation of the Permit's Receiving Water Limitations.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit VI.B. Thus, any discharges containing pollutant concentrations in excess of levels known to adversely affect aquatic species and the environment are violations of the Permit.

3. *Monitoring and Reporting Requirements*

The Storm Water Permit requires that facilities develop and implement a stormwater monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure that BMPs are in place that can achieve compliance with the Permit's Effluent Limitations and Receiving Water Limitations. *See* 1997 Permit B(2); 2015 Permit XI. An effective M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the core BAT/BCT standard. The foundational elements of an adequate M&RP are the creation and implementation of a robust SWPPP that is specific to the facility and revised/improved in response to lessons learned from implementation and data collection.

As noted above, the 1997 Permit and 2015 Permit impose substantially identical requirements on covered facilities. *See* 1997 Permit B(3)- B(16), 2015 Permit X(I) and XI(A)-

¹⁸ Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

¹⁹ available at

http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

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XI(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit B(3). The 2015 Permit increased the frequency of visual observations to monthly and requires observations to be completed at the same time samples are collected. 2015 Permit XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit B(4); 2015 XI(A)(2). Dischargers must document observations, and any responses are taken to address problems observed, including revisions made to the SWPPP. 1997 Permit B(3)-(4); 2015 Permit XI(A)(2)-(3). Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining results.

III. VIOLATIONS OF THE PERMIT AND ACT AT WIGGINS FACILITY

In the years since enrolling in the Permit, Wiggins has failed to carry out its obligations under both the Permit and Act. As discussed in further detail below, the Facility is in ongoing violation of the Permit, and its violations span both the 1997 Permit and 2015 Permit. Specifically, the Facility has discharged pollutants in violation of the Permit's Effluent Limitations, failed to develop a legally adequate M&RP; failed to develop, implement and/or update a legally adequate SWPPP to ensure the development and implementation of BMPs that achieve BAT/BCT; failed to timely develop and/or submit a Level 1 ERA evaluation onto the State Board's database; and failed to submit accurate and complete Annual Reports.

A. Effluent Limitation Violations

The citizen suit provisions of the Act provide that "any citizen" may commence a suit "against any person," including a corporation, "who is alleged to be in violation of an effluent standard or limitation under this chapter." 33 U.S.C § 1365(a)(1). The Act then defines "effluent standard or limitation" to include "a permit or condition" issued under section 402. *Id.* § 1365(f)(6). Accordingly, Wishtoyo may commence a suit alleging violations of the General Industrial Permit by the Facility. See *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (allowing citizen action for alleged stormwater permit violations holding company liable for discharges of "significant contributions of pollutants" and inadequate record keeping).

On July 1, 2015, the 2015 Permit superseded the 1997 Permit for all but enforcement purposes. Accordingly, Wiggins is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. See *Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-481 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitation of an expired permit, when those limitations have been transferred to a newly issued permit, may be viewed as currently in effect").

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Wishtoyo puts Wiggins on notice that the Permit's Effluent Limitations and Receiving Water Limitations are violated each time stormwater discharges from the Facility without having been subjected to properly developed and implemented BMPs. *See Exhibit A: Storm Event Summary* (setting forth dates of significant rain events).²⁰ These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Wiggins discharges polluted stormwater in violation of Effluent Limitations or Receiving Water Limitations is a separate and distinct violation of both the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Wiggins is subject to civil penalties for all violations of the Clean Water Act detailed below occurring since February 7, 2012.

Information available to Wishtoyo indicates that the Facility has failed and continue to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through the implementation of BMPs that achieve BAT/BCT as required by the Act through the Permit. As noted above, benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT as required by the Permit's Effluent Limitations. Here, Wiggins must sample for conventional industrial pollutants (i.e. pH, SC,²¹ TSS, O&G); pollutants likely to be present at the Facility and which have been detected as present in sampling due to the Facility's specific operations such as Al, Fe, Zn, Cu and Mg, as well as other potential pollutants present at the Facility identified in the Facility SWPPP such as Total Recoverable Petroleum Hydrocarbons ("TRPH") and Lead ("Pb").²²

Notwithstanding the inadequacy of the sampling data (as discussed below), the Facility has self-reported on numerous occasions of parameter exceedances by orders of magnitude.²³ For example, zinc levels were more than seven (7) times its annual NAL benchmark during the 2012-13 reporting year. In the 2015-16 reporting year, aluminum and iron and zinc ranged between nine (9) and twenty (20) times above applicable benchmarks – even under the most favorable of calculations. The sampling data summarized in TABLE 2 on the following page demonstrates that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act's BAT/BCT mandates.

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²⁰ A significant qualified rain event (QSE) is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. Dates of significant rain events are measured at multiple locations including five stations within three miles of the approximate discharge site.

²¹ The 2015 Permit does not require facilities to analyze samples for Specific Conductance, but may be tested as an additional sampling parameter. *See General Industrial Permit, Attachment H: Sample Collection And Handling Instructions*, p. 3.

²² According to Table 5.2 Analytical Constituents of the 2015 SWPPP, Lead is to be sampled using specific analytical method (EPA 200.8), with certain annual NALs and reporting limits (0.262 and 0.005 Mg/L, respectively); Total Recoverable Petroleum Hydrocarbons is to be tested using EPA 418.1 method.

²³ Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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TABLE 2
THE FACILITY'S ANALYTICAL RESULTS AS SUBMITTED TO THE STATE

Line	Date	TSS	Al	Fe	Zn	Cu	Pb	Other
1	Benchmark/NAL	100	0.75	1.0	0.117	0.0322	0.262	0.064
3	Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
3	02/06/14	83	2.40	2.90	1.00	0.043	0.045	(Mg) 0.15 ^c
4	12/02/14	110	NT	NT	NT	NT	NT	NT
5	09/15/15 ^d	340	6.10	14.00	2.50	NT	0.240	NT
6	01/05/16	170	4.70	9.90	0.99	NT	0.160	NT
7	03/07/16 ^e	360	7.10	17.0	2.20	NT	0.170	NT
8	03/11/16	950	13.0	17.0	4.30	NT	0.460	NT

^a *Red* indicates values reported by Wiggins exceeding applicable Effluent Limitations and/or Water Quality Limitations.

^a Not detected above method detection limit according to the lab.

^b Not tested by Wiggins.

^c Magnesium detected under analytical method EPA 200.7, with an annual benchmark/NAL of 0.064 mg/L. See Permit, Table 2: Parameter NAL Values, Test Methods, and Reporting Units

^d Sample untimely uploaded to SMARTS database on December 13, 2016 –over one year after due date.

^e Invalid Qualified Storm Event since Facility likely experienced discharge within proceeding 48 hours on Mar. 5 (0.23 in.) and Mar. 6 (0.86 in.). See Exhibit A: Storm Event Summary.

The results of storm water sample analysis, to the extent Wiggins complied with its sampling requirements (lines 3-8), indicated consistent exceedances of applicable benchmarks for multiple parameters – up to 8x above parameters for TSS, 13x for Al, 17x for Fe and 40x for Zn.

Wiggins also failed to timely submit the results from its Sep. 15, 2015 sample containing high levels of multiple parameters (i.e. TSS, SC, Al, Fe, and Zn) (line 5). Only after receiving a Level 1 Status Notification email (Sep. 23, 2016) and letter (Dec. 7, 2016) did the Facility submit the results in its Ad Hoc Monitoring Report (Dec. 13, 2016).

These discharge violations are ongoing and will continue every time Wiggins discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent

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Limitation V.A. is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in TABLE 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of an NAL benchmark demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.²⁴

B. Receiving Water Limitation Violations²⁵

1. *Primary Receiving Water Limitation*

The Basin Plan identifies beneficial uses of the Receiving Waters to include, among others, municipal and domestic water supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The Basin Plan provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)...”²⁶ The Basin Plan provides a Maximum Contaminant Level (“MCL”) for Al of 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of 1 mg/L for Aluminum (set forth in Table 2) in the Facility’s storm water discharges is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Storm Water Permit, Receiving Water Limitation VI.A of the 2015 Permit and the Clean Water Act.

2. *Secondary Receiving Water Limitations*

Wishtoyo’s review of the sampling data reported to the State and Regional Boards demonstrates that the Facility has discharged and continues to discharge polluted storm water containing pollutant concentrations that violate the Permit’s secondary Receiving Water Limitations. Discharges of toxic metals such as iron, aluminum, copper, lead, and zinc from the Facility into Receiving Waters cause or contribute to: acute and chronic toxicity and sublethal toxicity impacts to aquatic life and aquatic plants; change in the diversity and abundance of aquatic life; change in aquatic community structure and function; impacts to metabolism and

²⁴ “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

²⁵ As described above, the primary Receiving Water Limitation requires that industrial storm water discharges not cause or contribute to an exceedance of applicable WSQ, including those established by EPA, contained in a Statewide Water Quality Control Plan, the CTR or set in the Basin Plan. 1997 Permit C(2); 2015 Permit VI(A). The secondary Receiving Water Limitation requires that industrial storm water discharges not adversely affect human health or the environment. 1997 Permit C(1); 2015 Permit VI(B).

²⁶ Basin Plan at 3-8.

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osmoregulation of aquatic life; change in the structure and quality on benthic invertebrate habitat and food resources leading to decline in benthic invertebrate populations and diversity; and increases in aquatic organisms dietary supply of metals that can result in toxicity effects that ripple through an ecosystem's food chain. Both the Estuary and Reach 1 of the SCR to which Wiggins discharges are listed as impaired for toxicity.²⁷ Polluted storm water discharged from the Wiggins Facility causes and/or contributes to the impairment of water quality in the SCR, SCR Estuary, and the SCR watershed which is acutely toxic to, and have sub-lethal impacts on, the Southern California Steelhead and other aquatic life in the SCR and the SCR Estuary. Therefore, the stormwater discharges from the Facility adversely impact human health and the environment in violation of Receiving Water Limitation C(1) of the 1997 Storm Water Permit, Receiving Water Limitation VI.B of the 2015 Permit, and the Clean Water Act.

Wishtoyo puts Wiggins on notice that the 2015 Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility including each event summarized in Table 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged. . Each time discharges of storm water from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitations C(1) of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. §131(a). Each time discharges of storm water from the Facility violate an applicable WQS, is a separate and distinct violation of Receiving Water Limitations C(2) of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. §131(a).

C. Monitoring and Reporting Program Violation

As described above, the Permit requires Wiggins to develop and implement an M&RP that monitors pollutants in the Facility's discharges, and then to make commensurate revisions to its BMPs to ensure compliance with the Permit and Act. Wiggins has been and continues to conduct operations at the Facility with a legally inadequate and poorly implemented M&RP. Wishtoyo's principal concerns are the Facility's failure to collect the required number of storm water samples, and its failure to analyze samples collected for all parameters required by the Permit. Among others, the following constitute the principal deficiencies in the M&RP at the Facility:

- *Inadequate Sampling and Reporting Frequency*—every year between the 2011-12 and 2015-16 storm water years, the Facility has failed to collect an adequate number samples during the relevant reporting period and report them in a compliant annual report, despite the opportunity to do so. For example, the Facility collected no samples in the second reporting period (Jan. 1 – Jun. 30) for storm year 2011-12, despite having nine (9) rain events of at least 0.1 inches, four (4) of which were during non-holiday, workdays and with no rainfall in the preceding 48 hours (i.e. opportunities to test). *See Exhibit A: Storm Event Summary.* Similarly, the Facility collected no samples during the entire 2012-13 year (22 events, 7 opportunities); nor the first half of the 2013-14 year (4 events, 2 opportunities); nor the second half of 2013-14 (10 events, 4 opportunities); only 1 sample

²⁷ See footnote 10.

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during first half of 2015-16 (4 events, 3 opportunities), and no samples were taken during the recently completed first half of 2016-17 (8 events, 2 opportunities).

- *Incomplete Sample Results*—on numerous occasions, the Facility has failed to test sample for all necessary parameters. For example, the only sample taken during the 2014-15 reporting year (Dec. 2, 2014) did not show the results for aluminum, iron, zinc, copper, or lead—thus preventing any comparison against benchmarks for exceedances. *See* Table 2: Facility's Analytical Results, line 4). Additionally, after reporting copper and magnesium levels above annual benchmarks (33 and 134 percent, respectively), the Facility failed to test for either parameter in all of its subsequent samples.
- *Inaccurate and Misleading Reporting*—As discussed in section C.A. "Effluent Limitation Violations," the Facility submitted samples that were invalid (Mar. 7, 2016) and untimely (Sep. 15, 2015). Additionally, when finally submitting the data for the Sept. 15, 2015 sample, the Facility reported aluminum levels at 2.5 mg/L, despite the original results clearly showing levels at 6.1 mg/L.
- *Incorrect Testing Methods*—the Facility has repeatedly failed to use the appropriate testing method when testing samples. Although EPA requires its 200.8 testing method when testing for aluminum, cadmium, copper, lead, nickel, and zinc, the samples taken submitted by the Facility consistently used EPA's 200.7 methods, including multiple parameters in Feb. 6, 2014 sample and all four (4) samples taken during the 2015-16 reporting year.
- *Failure to Test for Sufficient Range of Pollutants*—the Facility operates as a lift truck manufacturer where activities threaten the discharge of various gases, oils, and liquids (e.g. propane, acetylene, hydraulic oil, waste/motor/gear oil, diesel, gasoline, new and waste coolant, ethylene glycol, degreaser, etc.). Under the 1997 Permit, facilities must analyze stormwater samples for "toxic chemicals and other pollutants that are likely to be present in stormwater discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze stormwater samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c). Despite these clear provisions requiring the Facility to augment its analysis of storm water samples beyond requirements imposed on all industrial facilities classified under SIC Code 3537, the Facility regularly tested only the minimum parameters. The Facility failed to take proper action, including continued sampling of storm water discharges for copper and magnesium and other constituents, after the copper or magnesium exceedances in Feb. 2014, as discussed above. Nor did the Facility ever test for total recoverable petroleum hydrocarbons despite being lists as a constituent to sample in its 2015 SWPPP. *See* Table 5.2, p. 28.
- *Failure to Complete ERA and Other Corrective Actions*—to date, the Facility has not completed and reported the required ERA evaluation for its effluent limitations violations. After submitting its 2015-16 Annual Report, the Regional Board notified Wiggins by courtesy email on Sep. 23, 2016 that the Facility needed to take action: (i) have an ERA

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performed identifying necessary BMPs by October 1, 2016; (ii) electronically submit the ERA onto the State Board's SMARTS database, implement all additional BMPs, and revise its SWPPP accordingly by Jan. 1, 2017; and (iii) submit the revised SWPPP onto SMARTS by Feb. 1, 2017. After missing the Oct. 2016 deadline, the Regional Board again notified Wiggins of these deadlines in its letter dated Dec. 7, 2016. As of Jan. 1, 2017, Wiggins has submitted no evidence indicating any of these requirements have or will be satisfied.

Wiggins' failure to conduct sampling and monitoring as required by the General Industrial Permit demonstrates that it has failed to develop, implement, and/or revise a legally adequate M&RP, and is in violation of the Act. Every day that the Facility conducts operations in violation of the specific monitoring requirements of the Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Permit and the Act. Wiggins has been in daily and continuous violation of the Permit's M&RP requirements every day since at least February 7, 2012. These violations are ongoing, and Wishtoyo will include additional violations when information becomes available.

D. Failure to Prepare, Implement, Review and Update an Adequate SWPPP

Under the Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities. Sections A(1) and E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. 1997 Permit A(2), 2015 Permit X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit A(9)-(10), 2015 Permit X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of

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industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. 2015 Permit X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. 2015 Permit X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. 2015 Permit Factsheet I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. 2015 Permit X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. 2015 Permit X(H)(2). The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. 2015 Permit X(H)(4), (5).

Despite these clear SWPPP requirements, Wiggins has been conducting and continues to conduct industrial operations at the Facility without a legally adequate SWPPP. Wishtoyo's principal concern with the Facility's SWPPP is that it fails to develop effective BMPs for acknowledged sources of pollution which have exceeded effluent limitations – demonstrating its legal inadequacy since it does not achieve compliance with the Permit. The Facility must revise its SWPPP to incorporate and implement effect BMPs to prevent continued discharges of contaminants.

E. Failure to File True and Correct Annual Reports

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. See 2015 Permit, Section XVI.

Wiggins has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. Information available to Wishtoyo indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmarks, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. As previously described, the Facility has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, Wiggins is in daily violation of the Permit. Every day the Facility conducts operations without reporting as required by the Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Wiggins has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least February 7, 2012. These violations are ongoing,

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and Wishtoyo will include additional violations when information becomes available, including, specifically, violations of the 2015 Permit reporting requirements. See 2015 Permit XII and XVI.

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Wishtoyo puts Wiggins, Michelle Wiggins-McDowell and Paul Hurbace on notice that they are the entities responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, Wishtoyo puts Wiggins on notice that it intends to include those persons in this action.

V. NAME AND ADDRESS OF NOTICING PARTY

Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and its Ventura Coastkeeper Program
9452 Telephone Rd #432
Ventura, CA 93004
805-823-3301

VI. COUNSEL

Please direct all communications to legal counsel retained by Wishtoyo for this matter:

Gideon Kracov
Law Office of Gideon Kracov
801 Grand Avenue, Floor 11
Los Angeles, CA 90017
gk@gideonlaw.net
213-629-2071

and

Jason A. Weiner
General Counsel
Wishtoyo Foundation & Ventura Coastkeeper
9452 Telephone Rd. #432
Ventura, CA 93004
jweiner.venturacoastkeeper@wishtoyo.org
805-823-3301

VII. PENALTIES

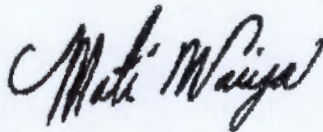
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the Facility to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, Wishtoyo will seek injunctive relief to prevent further violations of the Act pursuant to Sections

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505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Wishtoyo believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. Wishtoyo intends to file a citizen suit under Section 505(a) of the Act against Wiggins, the Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Wishtoyo would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, Wishtoyo suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as Wishtoyo does not intend to delay the filing of a complaint in federal court.

Sincerely,



Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and Wishtoyo Foundation's Ventura
Coastkeeper Program

Attachment A – Rain Event Summary for the Facility: 2012 through 2017

Cc: Dana Boenta, U.S. Department of Justice
Catherine McCabe, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
Samuel Unger, Regional Water Quality Control Board (Region 4)
DOJ, Citizen Suit Coordinator

VIA U.S. CERTIFIED MAIL

Dana Boenta, Acting U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

Acting Administrator Catherine McCabe
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.

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Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Samuel Unger, Executive Officer
LA Regional Water Quality Control Board
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Los Angeles, CA 90013

Citizen Suit Coordinator
DOJ-Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

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Exhibit A

STORM EVENT SUMMARY: January 2012 - February 2017

Days with Rainfall above 0.1 inches

https://www.wunderground.com/history/airport/KOXR/2016/12/22/CustomHistory.html?dayend=28&monthend=12&yearend=2016&req_city=&req_state=&req_statename=&reqdb.zip=&reqdb.magic=&reqdb.wmo= last accessed 2/7/17

Date (mm/dd/yy)	Rainfall (inches)
01/21/12	0.91
01/23/12	0.71
03/17/12	0.73
03/25/12	1.56
04/10/12	0.23
04/11/12	0.77
04/13/12	0.37
04/25/12	0.10
04/26/12	0.11
11/28/12	0.11
11/29/12	0.22
11/30/12	0.31
12/01/12	0.16
12/02/12	0.42
12/18/12	0.15
12/23/12	0.12
12/24/12	0.47
12/29/12	0.11
01/06/13	0.13

01/24/13	0.54
01/25/13	0.14
01/26/13	0.12
02/19/13	0.14
03/07/13	0.54
03/08/13	0.34
03/31/13	0.16
05/06/13	0.15
11/20/13	0.27
11/21/13	0.21
11/29/13	0.12
12/07/13	0.24
02/06/14	0.23
02/24/14	0.54
02/25/14	0.14
02/26/14	0.68
02/27/14	0.69
02/28/14	2.25
03/01/14	0.79
03/31/14	0.15
10/31/14	0.49

12/02/14	1.31
12/03/14	0.38
12/11/14	0.16
12/12/14	1.86
12/17/14	0.21
01/10/15	0.94
01/11/15	0.58
01/26/15	0.12
02/07/15	0.20
02/22/15	0.14
02/28/15	0.30
03/01/15	0.21
04/07/15	0.12
05/14/15	0.13
06/09/15	0.16
07/18/15	0.26
09/15/15	0.61
10/04/15	0.38
12/19/15	0.26
01/05/16	1.36
01/06/16	0.81

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01/07/16	0.42	10/28/16	0.21	1/5/17	0.37
01/19/16	0.17	10/30/16	0.16	1/7/17	0.37
01/31/16	0.39	11/20/16	0.46	1/9/17	0.82
02/17/16	0.22	11/26/16	0.51	1/11/17	0.32
02/18/16	0.10	12/15/16	0.52	1/12/17	.16
03/05/16	0.23	12/16/16	0.28	1/18/17	0.11
03/06/16	0.86	12/22/16	0.10	1/19/17	1.18
03/07/16	0.34	12/23/16	1.47	1/20/17	1.03
03/11/16	0.75	12/30/16	0.31	1/22/17	2.27
04/09/16	0.39	1/4/17	0.70	1/23/17	0.20
				2/3/17	0.16
				2/6/17	1.04
				2/7/17	0.11

* **Red** indicates a qualified significant rain event (QSE) on a non-holiday, workday per Wiggins' 2015 SWPPP.

** A QSE is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility, with no discharges occurring within the preceding 48 hours.

*** Historical rainfall data within the relevant area is measured at multiple weather stations including stations KCAOXNAR 9 (34.218, -119.169), KCAOXNAR 18 (34.228, -119.186), KCAOXNAR 17 (34.257, -119.149), KCAOXNAR 5 (34.211, -119.141), and KCAOXNAR 11 (34.221, -119.216); all located between 0.55 and 2.9 miles from the approximate discharge site (34.232, -119.167), as measured by online mapping tools (www.sunearthtools.com/tools/distance.php).